(34,057)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 748

HARRY F. SINCLAIR, HENRY MASON DAY, WILLIAM J. BURNS, W. SHERMAN BURNS

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia

No. 4819.

HARRY F. SINCLAIR ET AL.

vs.

UNITED STATES.

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a Supreme Court of the District of Columbia.

Criminal. Contempt, No. 17.

UNITED STATES

vs.

HARRY F. SINCLAIR, WILLIAM J. BURNS, W. SHERMAN BURNS, HENRY MASON DAY, SHELDON CLARK, and CHARLES L. VIETSCH.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Filed Nov. 22, 1927.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. Contempt, No. 17.

UNITED STATES

vs.

HARRY F. SINCLAIR, WILLIAM J. BURNS, W. SHERMAN BURNS, HENRY MASON DAY, SHELDON CLARK, and CHARLES L. VIETSCH.

Petition for Rule to show Cause Why Respondents Should Not be Punished as for a Criminal Contempt of Court.

To the Chief Justice and Associate Justices of the Supreme Court of the District of Columbia:

The United States of America, by Peyton Gordon, its attorney in and for the District of Columbia, represents unto your Honors as follows:

That, at the October 1927 term of this court, there came on for trial in the Criminal Division thereof, the case of United States v. Harry F. Sinclair and Albert B. Fall, Criminal No. 43324, wherein the defendants were charged with conspiracy to defraud the United States; that the trial of said cause was begun before the Hon. Frederick L. Siddons, Associate Justice of said Court, on October 17, 1927, and that Annella L. Bailey, Bernice K. Heaton, Gardner P. Grenfell, William H. Goecher, Conrad J. Herzog, Robert C. Flora, John P. Kern, Bradner W. Holmes, John J. Costinett, Norman L. Glasscock, Edward J. Kidwell, Jr., and Charles Holt were selected and sworn as petit jurors to well and truly try the said cause, at 12.20 o'clock p. m. on October 18th, 1927; that the Government, from that time, was

2 in the course of presenting its evidence in said cause, and the jury was respited from day to day, until November 2nd, 1927, on which last mentioned date, the jury was finally discharged from further consideration of said cause and a mistrial declared because of the fact that sworn charges had been made against the said Edward L.

Kidwell, Jr., one of said jurors, to the effect that he, the said Edward L. Kidwell, Jr., while said trial was in progress, to wit, on the 29th day of October, 1927, outside of the court room where said cause was being tried, to wit, at No. 411 Four and a Half Street, Southwest, in the city of Washington, in said District of Columbia, had made remarks in the presence and within hearing of J. Ray Akers and Donald Kay King concerning his attitude and intended action as a juror aforesaid towards the issues on trial in said cause; and sworn charges, also, to the effect that there were a large number of operatives of the William J. Burns International Detective Agency of New York, then engaged in the District of Columbia, since October 18th, 1927, in a close, intimate, objectionable, and improper surveillance and investigation of the jurors aforesaid and the relatives, neighbors, and friends of said jurors.

That about the time when said jurors were sworn in said cause as aforesaid, to wit, on October 18th, 1927, and before the discharge of said jurors aforesaid, said Harry F. Sinclair, one of the defendants on trial as aforesaid, ordered, directed and induced one Henry Mason Day and one Sheldon Clark, each of whom was then an employee and officer of a certain corporation which was then controlled by said Harry F. Sinclair through stock ownership, to wit, the said Henry Mason Day then being Vice President of the Sinclair Exploration Company and the said Sheldon Clark then being Vice President of the Sinclair Refining Corporation, to proceed from their headquarters in other cities, to wit, the said Henry Mason Day from New York, New
3 York, and the said Sheldon Clark from Chicago, Illinois, to the City of Washington, in the said District of Columbia, and engage the services of said The William J. Burns International Detective Agency, and supervise the activities and receive reports from divers operatives of said detective agency and forward the same to him, the said Harry F. Sinclair, for the following objects, that is to say:

To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each or any of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause, and to influence, per-

vert, impede, and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert, and prevent the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose.

That the employment of the said William J. Burns International Detective Agency was, in part, accordingly made by the said Henry Mason Day by telephone from the said Harry F. Sinclair's apartment at the Mayflower Hotel in the City of Washington, in said District of Columbia, on the 18th day of October, 1927, to the personal clerk to the said Harry F. Sinclair in said Harry F. Sinclair's
4 private offices in New York City, who thereupon communicated with W. Sherman Burns of said detective agency, and further negotiations were made later the same day between said W. Sherman Burns and the said Henry Mason Day; that thereafter, later that day and the following day, the 15 following-named operatives: Charles G. Ruddy, George H. Robbins, Daniel E. Merritt, Paul D. Steer, Frank J. O'Reilly, William J. McMullin, Thomas F. Brennan, Joseph E. Dwyer, Arthur J. Sullivan, Sidney A. Knowles, L. Paul Romrighausen, Richard S. Kirby, Paul M. O'Neil, John Klein, and Barton P. Stewart, of the said detective agency were assembled in the City of Washington, in the said District of Columbia, and thereafter, by said Henry Mason Day and said Sheldon Clark were assigned to duties of spying upon, investigating, and shadowing the aforesaid jurors in said cause, which said duties were performed by said operatives up to and including the 2nd day of November, 1927; that at or about one o'clock a. m. in the early morning of October 19th, 1927, the said Charles G. Ruddy, then in charge of aforesaid operatives, went to the City of Baltimore, in the State of Maryland, and there conferred with Charles S. Vietsch, another operative of said detective agency and its Baltimore Manager, and conferred with him

with regard to the operations to be carried out in the City of Washington, hereinbefore described; that thereafter, to wit, on October 24th, 25th, and 28th, 1927, the said Charles S. Vietsch came to the City of Washington, in the said District of Columbia, bringing with him on each occasion large sums of money, totalling in the aggregate of Fifteen Hundred Dollars which he the said Charles S. Vietsch turned over to the said Charles G. Ruddy for the purpose of financing the preliminary steps of said operations.

And that the said William J. Burns actively engaged in conducting the affairs of said agency, although not an officer of the same, was one of the founders thereof, and his wife holding forty-seven of the fifty shares of capital stock of said agency; that said William J. Burns, in said indirect fashion, receives monies and other benefits from the holding of said stock in his wife's name; and that the said William J. Burns visited the City of Washington, in said District of Columbia, with regard to the operations hereinbefore described of the agents of the William J. Burns International Detective Agency, and remained in the City of Washington to wit, on October 12th and 13th 1927, and thereafter, to wit, on the third day of November, 1927, the said William J. Burns returned to the City of Washington, in said District of Columbia, where he and the said W. Sherman Burns, in furtherance of said designs of said respondents, procured the making of a false affidavit purporting to show that a representative of the United States Department of Justice approached and held conversation with said Norman L. Glasscock, a juror in said cause, as aforesaid, and that the said William J. Burns and the said W. Sherman Burns, knowing said affidavit to be false and without truth and fact, did then and there procure the submission of said affidavit to said Honorable Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia, intending thereby to provide evidence, such as it was, that the United States of America, through one of its employees, had tampered with said juror in the case of United States v. Harry F. Sinclair and Albert B. Fall, Criminal No. 43324.

That said operatives, after said Juror Kern was sworn, and while serving as a juror in the said cause, at the direction of the said Charles G. Ruddy, proceeded to inves-

tigate any and all encumbrances upon the home of said Juror Kern in the said City of Washington, District
6 of Columbia, and the operatives so detailed investigated the land records of the District of Columbia, reported in writing, and concluded said report with the statement that efforts would be made to ascertain the names of those holding trust notes secured upon said Juror Kern's home.

That said operatives, acting under the direction of the said Charles G. Ruddy as aforesaid, invetsigated neighbors of said Juror Kern and reported that J. E. Vogts, a next-door neighbor of Juror Kern was reputed to be "well fixed as to money," having recently sold his home, and was represented to have made a thousand dollars in four days on one occasion as a result of granting favors relative to the shipment of corpses during the influenza epidemic while said Vogts was freight agent for two railroads.

That an investigation was conducted by the said operatives, under the direction of the said Charles G. Ruddy, with regard to the brother or father of the said Juror Kidwell, and reported in writing that the said brother's or father's place of business was located on questionable premises and that racing sheets were found in the trash thrown out of said premises.

That said operatives, working under the direction of the said Charles G. Ruddy, as aforesaid, and at the instigation of the said Charles G. Ruddy, falsely reported that said Juror Glasscock was seen in conference with a person shown by another report of another of said operatives to be an employee of the Department of Justice, at a remote place outside the City of Washington, for a period of 15 or 20 minutes.

That all said operatives engaged in the work aforesaid reported daily in writing to the said Charles G.
7 Ruddy who caused said reports to be typewritten, and the originals of said reports were sent to the said W. Sherman Burns in New York, New York, and the contents thereof reported to said respondents herein.

And your petitioner further represents that, at all times hereinbefore mentioned, each of the persons above named as respondents to this petition well knew all the premises aforesaid, and well knew that said criminal prosecution

was being conducted in said court as aforesaid, that said prosecution was not finished, that said jurors were sworn jurors trying the issues in said cause in said court as aforesaid; that they the said respondents were not, as in fact they were not, called upon or authorized by said court, or by anybody in authority, to spy upon said jurors or any of them, or to bribe, molest, intimidate, or influence said jurors or any of them, or to do anything calculated to interfere with or impede said jurors or any of them in the unbiased discharge of their said duties, or to influence, pervert, prevent, or in any manner, or to any extent, impede, the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon said jurors or any of them for the purpose of concocting false charges against one or more of said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid.

Wherefore, your petitioner prays this Honorable Court to enter an order requiring said Harry F. Sinclair, William J. Burns, W. Sherman Burns, Henry Mason Day, Sheldon Clark, and Charles L. Vietsch, respondents to appear in this court in person at a day certain, and to

8 show cause why they should not be held in contempt of this court and punished therefor as for a criminal contempt; and that if, upon the hearing of this petition, it appears to the Court that other persons were concerned in the matters stated herein as constituting a contempt of this court, that they be made parties to this petition, and its prayer for process and order to show cause be made applicable to them.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

Peyton Gordon, being first duly sworn according to law, on oath deposes and says: That he is the United States Attorney in and for the District of Columbia and that he has read the foregoing petition by him subscribed and knows

the contents thereof, that the matters and things therein stated are true to the best of his knowledge, information, and belief.

PEYTON GORDON.

Subscribed and sworn to before me, this 22d day of November, A. D. 1927.

[SEAL.] CARLTON G. SCHENKEN,
Notary Public, D. C.

9 Rule to Show Cause.

Filed November 22, 1927.

* * * * * * *

Upon consideration of the petition this day filed herein by Peyton Gordon, United States Attorney in and for the District of Columbia, and upon application in that behalf made, it is by the Court this 22nd day of November, A. D. 1927,

Adjudged that Harry F. Sinclair, William J. Burns, W. Sherman Burns, Henry Mason Day, Sheldon Clark, and Charles L. Veitsch, and each of them appear in person and show cause before this Court, if any they and either of them have or has on the 5th day of December, A. D. 1927, at 10 o'clock A. M., why they should not be adjudged in contempt of the authority of this Court as prayed in said petition; a certified copy of the petition and this rule to be served upon each of the respondents named herein on or before the 1st day of December, A. D. 1927.

F. L. SIDDONS,
Justice.

10 Filed December 5, 1927

Separate Answer of Respondent Harry F. Sinclair to the Petition and the Rule to Show Cause and Motion to Dismiss Said Petition and Discharge Said Rule.

* * * * * * *

Comes now the respondent Harry F. Sinclair and for answer to the petition of the United States and the rule to

show cause issued herein, and by way of motion to dismiss said petition and discharge said rule, shows unto the court as follows:

1. The said petition does not allege facts sufficient in law to confer jurisdiction upon this court to adjudge the respondent guilty of contempt.

2. The said petition fails to allege facts sufficient as matter of law to charge this respondent with contempt of court.

3. The facts alleged in said petition are insufficient as matter of law to charge misbehavior by this respondent in the presence of the court or so near thereto as to obstruct the due administration of justice.

4. The said petition does not allege facts showing or even tending to show that the respondent has been guilty of acts or conduct in any wise impending or tending to impede the due administration of justice.

5. This court is without jurisdiction to try this respondent or to adjudge him guilty of contempt of this court upon the allegation of said petition.

11

6. The court is without jurisdiction to entertain said petition or to make any adjudication thereon, because said petition is lacking in necessary and essential allegations showing that this respondent has been guilty of misbehavior in the presence of the court or so near thereto as to obstruct or impede the due administration of justice.

Wherefore, the respondent moves the court to dismiss said petition and to discharge the rule issued thereon against this respondent.

Further answering said petition and the rule to show cause issued thereon, without waiving but expressly reserving and insisting upon the deficiencies and lack of necessary and essential allegations in said petition, respondent shows unto the court:

(a). He admits that a certain cause of action known and described on the docket of this court as United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, came on for trial at the October Term of said court; that the trial of said cause was begun October 17, 1927, before Honorable Frederick L. Siddons, Associate Justice of said court, and that the jurors named in said petition were se-

lected and sworn as jurors to well and truly try the issues in said cause, as in said petition alleged.

(b) He admits that on and after the 18th day of October, 1927, the United States was in the course of presenting its evidence in said cause, and so continued up to and including the 31st day of October, 1927, and that the jury empaneled in said cause was respited from day to day until the 2nd day of November, 1927, on which last men-
12 tioned date the said jury was finally discharged from further consideration of said cause and a mistrial declared by this court.

(c). He admits that on the 1st day of November, 1927, certain charges were made by counsel for the United States, based upon affidavits made by Neil Burkinshaw and Walter M. Shea, both being Assistant United States District Attorneys, as well as affidavits made by J. Ray Akers and Donald K. King, filed on said day, relating to alleged misconduct of Edward L. Kidwell, Jr., one of the jurors in said cause, and the alleged activities of certain operatives of the William J. Burns International Detective Agency. This respondent does not admit that said jury was discharged and a mistrial declared for the reasons set forth in said petition, but avers that the said jury was discharged and a mistrial declared solely for the reasons announced by the Honorable Frederick L. Siddons, the justice presiding in said cause, as will be more particularly shown by reference to that part of the proceedings in said cause which relates to the discharge of said jury and the declaration of such mistrial and which is hereby specifically referred to and made part hereof. He denies that there either was or is any just ground for the assertion in the sworn charges referred to in the said petition that the operatives of said William J. Burns International Detective Agency had since October 18, 1927, been engaged in a "close, intimate, objectionable and improper surveillance and investigation of the jurors aforesaid and their relatives, neighbors, and friends of said jurors."

13 (d). He denies the allegation:

"That about the time when said jurors were sworn in said cause as aforesaid, to wit, on October 18th, 1927, and before the discharge of said jurors aforesaid, said Harry

F. Sinclair, one of the defendants on trial as aforesaid, ordered, directed and induced one Henry Mason Day and one Sheldon Clark, each of whom was then an employe and officer of a certain corporation which was then controlled by said Harry F. Sinclair through stock ownership, to wit, the said Henry Mason Day then being Vice President of the Sinclair Exploration Company and the said Sheldon Clark then being Vice President of the Sinclair Refining Corporation, to proceed from their headquarters in other cities, to wit, the said Henry Mason Day from New York, New York, and the said Sheldon Clark from Chicago, Illinois, to the City of Washington, in the said District of Columbia, and engage the services of said The William J. Burns International Detective Agency, and supervise the activities and receive reports from divers operatives of said detective agency and forward the same to him, the said Harry F. Sinclair, for the following objects, that is to say:

"To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each or any of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause, and to influence, pervert, impede, and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert, and prevent the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose."

Respondent avers that he never ordered, directed or induced Sheldon Clark to employ the said William J. Burns International Detective Agency, but admits that he authorized the employment by Henry Mason Day of operatives of said William J. Burns International Detective Agency for the purpose and reason hereinafter more particularly

set forth and none other; and emphatically and specifically denies that the said operatives were employed for
14 any of the objects or purposes as hereinbefore in said petition set forth.

(e). Upon information and belief he admits that the employment of said William J. Burns International Detective Agency was accomplished substantially in the manner and by the means set forth in said petition, and that certain communication was had between W. Sherman Burns and Henry Mason Day respecting the said employment.

(f). He is now advised and upon such information admits that the operatives named in said petition were, on or about October 19, 1927, assembled in the District of Columbia by said Burns International Detective Agency, save and except William J. McMullin, who, he is now advised, was employed and known by the name of Long. He denies that the operatives named in said petition were by Henry Mason Day and Sheldon Clark assigned to the duties of spying upon, investigating and shadowing the aforesaid jurors in said cause, but admits that he directed Henry Mason Day, to give instructions to said William J. Burns International Detective Agency as to the duties which were to be performed by the operatives of said Agency, which said instructions are hereinafter more particularly set forth. He avers that the said Sheldon Clark had no connection with instructing the said Agency respecting the duties to be performed by said operatives.

(g). He has no sufficient knowledge to enable him to admit or deny the allegations of said petition respecting the alleged conference between Charles G. Ruddy and Charles L. Vietsch, the visits of said Vietsch to the District of Columbia, the bringing by him of any sums of money to the District of Columbia, and the turning over of
15 the same to the said Charles G. Ruddy, as in said petition alleged.

(h). He has no sufficient knowledge as to enable him to admit or deny the allegation respecting the activities of said William J. Burns concerning the conduct of the affairs of the detective agency bearing his name, his ownership of stock therein, or benefits derived by him therefrom, nor has he any knowledge respecting the visits of said

William J. Burns to the District of Columbia, as in said petition alleged.

(i). He denies that in furtherance of any design with this respondent either the said William J. Burns or W. Sherman Burns procured the making of any false affidavit respecting a representative of the United States Department of Justice approaching or holding conversation with Norman L. Glasscock, a juror in said cause, as in said petition alleged, or procured the submission of said alleged false affidavit to the Honorable Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia, for the purpose set forth in said petition.

(j). He has no sufficient knowledge to enable him to admit or deny that one of the operatives of said William J. Burns International Detective Agency did make an investigation and report relative to the existence of encumbrances upon the property said to be owned by juror Kern, as in said petition alleged; but denies that the said investigation and report, if made, were authorized to be made by this respondent.

(k). He is now advised and upon such information admits that certain operatives of said William J. Burns International Detective Agency made an investigation and
16 report respecting one J. E. Vogts, as in said petition alleged; but denies that said investigation and report were made, or authorized by this respondent to be made.

(l). He is now advised and upon such information admits that certain of the operatives of said William J. Burns International Detective Agency conducted an investigation respecting the brother or father of Juror Kidwell, as in said petition alleged; but denies that said investigation and report were made, or authorized by this respondent to be made, for any improper or corrupt purpose or in any wise to impede or obstruct the administration of justice.

(m). He denies that he now has, or at any time had any knowledge that any false report was made by any operative of said William J. Burns International Detective Agency respecting the said Juror Glasscock, as in said petition alleged; and avers that if any such alleged false report was made, as in said petition averred, it was made and

done without the knowledge, consent or acquies-ence of this respondent.

(n). Upon information and belief he admits that certain reports were made by the said operatives of said Burns Detective Agency respecting their activities, but has no sufficient knowledge to enable him to admit or deny the allegations set forth in said petition respecting the manner in which said reports were handled by the said William J. Burns International Detective Agency.

(o). Further answering said petition, this respondent denies that he "well knew all the premises aforesaid," as alleged in said petition, save and except such as are specifically admitted herein. This respondent admits he knew said criminal prosecution was being conducted, that
17 said prosecution was not finished, and that the said jurors were sworn jurors trying the issues in said cause. This respondent denies each and every allegation in said petition contained that he did anything or authorized the doing of anything having for its object the bribery, molesting, intimidating or influencing of said jurors or any of them, or the doing of anything calculated to interfere with or impede said jurors or any of them in the unbiased discharge of their duties, or to influence, pervert, prevent, or in any manner, or to any extent, impede the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon said jurors or any of them for the purpose of concocting false charges against one or more of said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid, as in said petition alleged.

(p). Further answering said petition and each and every allegation thereof, this respondent says that when the jurors, upon being selected and sworn in the cause aforesaid were not ordered to be kept together in the custody of the United States Marshal during the recesses of the court, he did authorize the employment of the William J. Burns International Detective Agency, but solely to keep said

jurors under observation for the purpose of ascertaining what persons, if any, came in contact with said jurors, to the end that he might know if any person who might be desirous of seeing him convicted of the charges against him should endeavor in any way to seek contact with
18 any of said jurors; and this respondent advises the court that he believes he had the lawful right to employ the said William J. Burns International Detective Agency for the purpose aforesaid.

Respondent represents to the court that in the employment of said William J. Burns International Detective Agency he directed said Henry Mason Day that the operatives so employed should receive strict and peremptory instructions that they should not come in contact with, approach or converse with any of said jurors and should not in any wise molest, interfere with, impede or influence any of said jurors in the performance of their duties as such.

Having in mind the matters and things herein set forth, and believing that in cases involving great public interest the government from time to time had kept jurors under surveillance during the time of such trials, and, entertaining such belief that the government of the United States had exercised such right and privilege, he believed that he, as a citizen of the United States, had the same right and privilege.

Respondent believed and still believes that the prosecution of him by the government of the United States has been conducted in a manner not in accordance with the usual procedure pertaining to the trial of criminal cases. Under a Senate Joint Resolution, adopted by the Congress and approved by the President of the United States, special prosecutors were appointed by the President and confirmed by the Senate to conduct, by direction of the Congress of the United States, the prosecution of respondent for alleged violation of the law in the place and stead
19 of the District Attorney and the Attorney General of the United States, who under general laws are charged with the responsibility of prosecuting citizens of the United States charged with violating its laws. He has been made the object of a special prosecution initiated, sponsored and nurtured by the Congress of the United

States in a manner and to an extent never before visited upon a citizen of the United States; and this is made manifest by the fact that, in order to enable the special government counsel to conduct said prosecution in the manner they desired, special legislation was enacted by the Congress of the United States, as he believes, at the instance of said special counsel for the purpose of abrogating long-established principles applicable to criminal procedure.

After respondent had perfected appeals in the Court of Appeals of the District of Columbia in the prosecutions against him one of which said appeals involved the sufficiency in law of the very indictment being tried in said cause known as United States vs. Sinclair and Fall, Criminal No. 43,324, Congress changed the long-established law of the land, depriving him of the right to have his appeals either heard or decided. Additional special legislation was sought by said special counsel during the last session of the Congress of the United States, and at the request of such special counsel bills were introduced respectively in the Senate and House of Representatives of the United States seeking the enactment of other special laws making radical changes in the criminal procedure of the United States and specifically directed at the prosecution of respondent.

Respondent had every reason to believe and did believe that during the greater part of the past four years he has been subjected to surveillance by agents whom he has every reason to believe were in the employ of the United States Government, and that said agents have watched and shadowed respondent not only in his place of business, but also in and about his home, and in addition have made numerous and extensive examinations of his books, records and documents as well as his bank accounts, and have also interrogated his employees and, in short, have pried into all his activities of whatever nature in his private and business life.

Moreover, it was manifest to respondent that at least a portion of the public press, having a large and extensive circulation in the District of Columbia, without awaiting the facts which might be developed during the course of the trial, published news articles which were calculated to

prejudice and bias the community in said District against this respondent.

And having fully answered, this respondent prays that the rule to show cause be discharged and the said petition be dismissed.

HARRY F. SINCLAIR,
Respondent.

MARTIN W. LITTLETON,
GEO. P. HOOVER,
G. T. STANFORD,
Attorneys for Respondent.

21 DISTRICT OF COLUMBIA, *ss:*

Harry F. Sinclair, having been first duly sworn, on oath deposes and says that he has read the foregoing answer and motion, by him subscribed, and knows the contents thereof; that the matters and facts therein stated as upon personal knowledge are true, and those stated as upon information and belief he believes to be true.

HARRY F. SINCLAIR.

Subscribed and sworn to before me this 5th day of December, 1927.

[Notarial Seal.] GEO. C. OBER, JR.,
Notary Public in and for
District of Columbia.

22 *Return of Respondent William J. Burns to Rule to Show Cause, &c.*

Filed Dec. 5, 1927.

* * * * * * *

To the Chief Justice and Associate Justices of the Supreme Court of the District of Columbia:

Now comes the respondent William J. Burns, in his proper person and by his attorney, and for a return to the rule to show cause issued against him and others in the above entitled cause on the 22nd day of November, 1927, and for cause why he should not be adjudged in contempt

of the authority of this Honorable Court, respectfully represents and shows:

1. That the petition for said rule to show cause is insufficient in law to charge this respondent with a criminal contempt of this Honorable Court, in that the said petition is duplicitous and multifarious, and in that the allegations of said petition are insufficient in law to constitute contempt against this Honorable Court, and this court is without jurisdiction in the premises.

2. Without waiving any of the irregularities and insufficiencies in law or otherwise of the petition, this respondent states that he is not guilty of any contempt of the authority of this Honorable Court as attempted to be charged in the petition herein.

3. This respondent is not guilty of doing any act or thing whether attempted to be charged in the aforesaid petition or otherwise, which might or could constitute a contempt of the authority of this Honorable Court.

4. This respondent denies the allegations of the petition in the manner and form as alleged, except as may
23 hereinafter specifically be admitted.

5. This respondent says that he is not actively engaged in conducting the affairs of the Burns International Detective Agency as alleged in the petition, and that he has not been so engaged since August, 1921, when he became connected with the Department of Justice of the United States as Director of the Bureau of Investigation; that his only connection with said Agency at the present time is in an advisory capacity; that while he is not actively engaged in conducting its affairs and is not an officer or director of said Agency, yet he is interested in the affairs of said Agency not only because he was its founder, but because his two sons are its chief executive officers, and because his wife is the holder of forty-seven of the fifty shares of its capital stock, though said holding is for her sole and separate estate and not a holding for him in his wife's name as charged in said petition.

This respondent further says, as he purposes to show on the hearing of this cause, that he did not know that the

Burns International Detective Agency had been employed to keep the petit jury in the case of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, under surveillance or that it was engaged upon that undertaking until to-wit, the 31st day of October, 1927, on which date he was advised by a newspaper correspondent who called him upon the telephone at his home in the City of New York that a United States Marshal of the District of Columbia had seized at Washington certain reports of the Burns Agency, relating to the surveillance of the jury in the case of United States vs. Harry F. Sinclair and Albert B. Fall. But this respondent says that had his advice been sought upon the subject he would unhesitatingly have advised that such employment was a perfectly lawful
24 and proper one and that the practice of keeping a jury under surveillance was a lawful and proper practice frequently followed by the Bureau of Investigation of the Department of Justice of the United States on behalf of the Government, as well as by private litigants, both plaintiffs and defendants, in instances where juries are not kept together during the trial of a cause.

That from the investigation he has made since this matter was brought to his attention he is likewise convinced, and therefore alleges, upon his information and belief, that the charges of any unlawful or improper conduct by the Burns Agency are untrue and unfounded, as will be shown on a due hearing of this matter.

That from his investigation he is likewise convinced, and upon information and belief alleges the fact to be, that no officer or agent or operative or employee of the Burns International Detective Agency or of this respondent ever approached, spoke to or made any contact of any kind or character with any juror engaged in the trial of the case of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, nor did anything calculated to interfere with, obstruct or impede the said jurors in the unbiased discharge of their duties in the trial of the said cause, or endeavored to do or attempted to do or did any act or thing whatsoever to influence, pervert, impede and prevent the said jurors in the discharge of their duties, or to impede, pervert and prevent the due administration of

justice in the said court in the trial of the said criminal prosecution, or endeavored to do or attempted to do or did any act or thing whatsoever to bribe, molest, intimidate or influence said jurors or any of them; nor, (and this he avers of his own knowledge) did this respondent do or attempt to do, any of the acts or things aforesaid; nor was said surveillance made with the purpose of, nor did it have the effect of, promoting or furthering contact between said jurors or any of them and any other person or persons.

This respondent says that the allegation of said petition that "said William J. Burns visited the city of Washington, in said District of Columbia, with regard to the operations heretofore described of the agents of the William J. Burns International Detective Agency, and remained in the City of Washington, to-wit, on October 12th and 13th, 1927," is absolutely untrue and unfounded.

This respondent says that he was in the City of Washington on the 12th and 13th days of October, 1927, but that the reason for said visit and the business transacted by him were not in the remotest degree connected with the trial of the aforesaid cause of United States vs. Sinclair, et al, as he purposes to show on hearing hereof, and upon information and belief he alleges that at the time of his said visit the said Burns Agency had not been employed to make a jury surveillance nor had the matter been considered, discussed or mentioned to any officer or employee of the said Burns Agency, nor, (and this he avers of his own knowledge) to this respondent.

This respondent denies that he was in the City of Washington on the 3rd day of November, 1927. This respondent further says that he was not in the City of Washington at any time between the 13th day of October, 1927, and the 6th day of November, 1927.

That after this matter was brought to his attention in the manner hereinbefore set forth, and in response to a subpœna to appear before the grand jury of the District of Columbia, he proceeded to the City of Washington, in the District of Columbia, together with his son, W. Sherman Burns, on the 6th day of November, 1927, which this respondent is informed and believes and therefore

avers was four days after the entry of the order of mistrial in the aforesaid cause of United States vs. Sinclair, et al, and two days after the making of the affidavit of operative William J. McMullin, alias Long.

This respondent says that he had absolutely nothing whatsoever to do with the making of the affidavit of operative William J. McMullin, alias Long; that this respondent had never heard of or met the said William J. McMullin, alias Long, or had any communication with him directly or indirectly, until after the entry of the order of mistrial in the case of United States vs. Sinclair, et al, and until after the making of the affidavit of said McMullin, alias Long, referred to in said petition, and until after November 4, 1927, at which time, as affiant is informed and believes, and therefore avers, the said affidavit had already been handed to this Honorable Court.

That at Washington, in the District of Columbia, on Tuesday, the 8th day of November, 1927, (a statement having theretofore appeared in the public press that H. R. Lamb and Juror Glasscock had appeared before the grand jury of the District of Columbia and had given testimony to the effect that the reports of operative Long were false), this respondent questioned said operative whom he then believed to be named Long (and whom he then met for the first time) as to the truth or falsity of his reports and of the affidavit thereon, and said McMullin, alias Long,
27 stated that said reports and affidavit were in every respect true and correct.

This respondent further says that he has never done any act or thing, nor counselled, advised or suggested to others that they do any act or thing which could constitute a contempt of this Honorable Court.

Wherefore, having fully answered, this respondent prays that the rule to show cause laid upon him be discharged and the petition dismissed, and that he be adjudged by this Honorable Court to be "not guilty" of any contempt of the authority of this Honorable Court.

WILLIAM J. BURNS,
Respondent.

CHAS. A. DOUGLAS,
Attorney for Respondent.

DISTRICT OF COLUMBIA, *ss:*

William J. Burns, being first duly sworn, does on oath depose and say that he has read the foregoing answer and return to the rule to show cause by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true and those therein stated upon information and belief he believes to be true.

WILLIAM J. BURNS.

Subscribed and sworn to before me this 5th day of December, 1927.

[NOTARIAL SEAL.] GERTRUDE ELLIS,
Notary Public, D. C.

28 *Return of Respondent W. Sherman Burns to Rule to Show Cause, &c.*

Filed December 5, 1927

* * * * * * *

To the Chief Justice and Associate Justices of the Supreme Court of the District of Columbia:

Now comes the respondent W. Sherman Burns, in his proper person and by his attorneys and for a return to the rule to show cause issued against him and others in the above entitled cause on the 22nd day of November, 1927, and for cause why he should not be adjudged in contempt of the authority of this honorable court, respectfully represents and shows:

1.

That the petition for said rule to show cause is insufficient in law to charge this respondent with a criminal contempt of this honorable court in that the said petition is duplicitous and multifarious, improperly joins parties, and that the facts alleged in said petition, even if fully established, do not constitute contempt of this honorable court, criminal or otherwise, and the court is without jurisdiction in the premises.

2.

Without waiving any of the irregularities and insufficiencies in law or otherwise of the petition, but expressly asserting that they, all and singular, entitle this respondent to the dismissal of said petition and to the discharge of the rule to show cause based thereon, this respondent states that he is not guilty of any contempt of the authority of this honorable court as attempted to be charged in the petition herein.

3.

29 This respondent is not guilty of doing any act or thing, whether attempted to be charged in the aforesaid petition or otherwise, which might or could constitute a contempt of the authority of this honorable court.

4.

This respondent denies each and every allegation of the petition except as hereinafter specifically admitted.

5

The William J. Burns International Detective Agency, Inc., hereinafter, for convenience, called the "Agency" is incorporated under the laws of the state of New York and engaged in general investigation work throughout the United States and foreign countries and is licensed and bonded to carry on a general detective business in the District of Columbia.

6

This respondent is now and has been for several years past Secretary and Treasurer of the Agency and has been and is now, in conjunction with Raymond Burns, the President, in charge and direction of the Agency's operations.

7.

On the 18th day of October, 1927, this respondent accepted on behalf of said Agency, from one Henry Mason Day, by long distance telephone, employment to watch the individual members of the jury, while the court was not in session and the jurors were at large, in a conspiracy case then pending in the Supreme Court of the District of Co-

lumbia against Harry F. Sinclair and Albert B. Fall, and to ascertain and report if any person or persons at
30 any time during the progress of said conspiracy trial sought to, or did actually establish contact with any of the said jurors. Neither at the time of the said employment nor during its continuance was the suggestion made by Day or any of his representatives and associates, nor was it in any way contemplated that the operatives of the Agency would speak to, or have any contact with, the members of the said jury and had any such suggestion been made the Agency would not have accepted said employment. This respondent directed Charles G. Ruddy, the manager of the Philadelphia office of the Agency, to assume and take charge of the work to be done under said employment and at the time of such designation this respondent clearly and emphatically instructed Manager Ruddy to limit the work of the operatives simply and exclusively to the ascertainment by surveillance only whether or not any person or persons established or attempted to establish any contact with any of said jurors during the trial of said criminal cause, and this respondent thereupon directed the said Ruddy to in turn instruct the operatives and each of them not to talk to, or have any contact with any of said jurors.

This respondent is informed and believes that Manager Ruddy strictly obeyed respondent's orders and directions, as above stated, and that he (Ruddy) informed the operatives that they must not talk to, or have any contact with, any of said jurors, or do anything that would be calculated to intimidate or interfere with any of said jurors, and that any infraction of these instructions would result in immediate dismissal from the service of the Agency.

8.

This respondent is informed and believes that none of the operatives engaged upon this work established or at-
31 tempted to establish any contract, direct or indirectly, with any of said jurors or did anything in any way that was calculated to interfere with them in any manner whatsoever; and he is also informed and believes that not one of the jurors, before the jury was discharged in the

conspiracy case, had any knowledge or suspicion that he or she was actually under surveillance.

9.

This respondent states that the long distance telephone conversation set forth in the seventh paragraph of this answer, which occurred on the 18th day of October, 1927, was the only conversation on the subject of employment that he had at any time with said Day, and that he has no personal acquaintance with him; and he further states that the said Day is the only person, other than the members of the respondent's organization, with whom the respondent, at any time, had any conversation concerning the said employment.

10.

This respondent further states that if Henry Mason Day, or any of his associates, or any person or persons connected with him, had in mind the immediate or ultimate design of establishing contact with one or more of the said jurors for the purpose of bribery, as in said petition alleged, or to obstruct the administration of the law in any way whatsoever, he (respondent) had no knowledge or information concerning the same and did not suspect or believe that such purpose or design actually existed; and this respondent denies that the objects of the employment and work of the Agency in this matter were to spy upon the jurors for the purpose of bribery, intimidation or exertion of influence, or to do anything calculated to interfere with or impede said jurors or any of them in the unbiased discharge of the jury by mistrial or otherwise, or to do anything that would be calculated to impede or pervert or prevent the due administration of justice, either by corruptly influencing said jurors to decide the issues in said criminal case in favor of the defendants therein, or to effect a mistrial.

32

11.

Answering so much of said petition as alleges that respondent Veitsch took part in the operations and activities of the Agency in this matter this respondent states the facts to be that Veitsch had no connection with or any pa-

ticipation in either the employment or the work done thereunder except to transmit $1,500 from Baltimore to Ruddy in charge of the operatives in Washington on the order of this respondent and for the purpose of financing the expenses of the work which simply meant the pay and expenses of the operatives, which sum of money was used solely for that purpose, all of which will appear by reference to the reports and expense accounts of said operatives now in the possession of the District Attorney.

12.

This respondent further says that if by the statement in said petition that "they, the said respondents, were not, as in fact they were not, called upon or authorized by said court or by anybody in authority" to spy upon the said jurors or any of them, it is meant to charge or to imply that the right to exercise surveillance of a jury empanelled in any cause is a right reserved exclusively to, and one that can be exercised only by, the government of the
33 United States or its prosecuting officers, this respondent is advised by counsel that there is no warrant in law therefor, and this respondent is further advised by counsel that the Agency and its officers and operatives were strictly within the letter and spirit of the law in accepting the employment hereinbefore described and defined, and in doing the work thereunder, and that no contempt of this honorable court was committed thereby.

13.

This respondent specifically denies the truth of the statement that he and William J. Burns, or that he alone or with any other person, procured the making of a false affidavit to show that a representative of the United States Department of Justice approached and held conversation with one Glasscock, a juror in the said conspiracy case; and he further denies that he and William J. Burns, or he individually or with any other person, knowing said affidavit to be false, procured the same to be submitted to this court for the purpose of providing evidence that the United States of America, through one of its employees

had tampered with the said juror Glasscock in the conspiracy case against Harry F. Sinclair and Albert B. Fall. This respondent states that neither he nor, to the best of his knowledge and belief, was William J. Burns, in the City of Washington on the 3rd day of November, 1927, as alleged on page 6 of the petition, for the purpose of procuring the alleged false affidavit or for any other purpose whatsoever; that as far as he is informed and believes the said William J. Burns was not in Washington between October 13th and November 6th, 1927. In response to a subpoena to testify before the Grand Jury this respondent, for the first time in the space of about a year, came
34 to Washington on the 6th day of November, 1927.

Answering the last paragraph on page 7 of the petition, this respondent says that if the statement in the report of the operative mentioned therein to the effect that he saw juror Glasscock in conference with an employee of the Department of Justice is false this respondent had no knowledge of its falsity and does not now know it to be false; and on information and belief he denies that Manager Ruddy procured the said operative to make such or any other false statement, and further answering said paragraph, this respondent says that the operative to which reference is made in said paragraph is one William J. McMullin who fraudulently obtained employment with the Agency under the name of William V. Long on or about the 1st day of October, 1927, that is to say by the unauthorized use of the name, reputation and credentials of the real William V. Long, and with the fraudulent purpose of deceiving the said Agency as to his real identity and his fitness and qualifications for the employment sought. That at the time of the making of the said report by the said operative, Manager Ruddy had every reason to believe that the said McMullin was a man who could be depended upon to make a true and correct and honest report; that from the time of his employment and up to the 8th day of November, 1927, neither this respondent nor William J. Burns as far as this respondent is informed and believes had ever seen the said McMullin or had any conversation with him or had anything to do with him whatsoever and did not see him or become acquainted with him until Tuesday the

8th day of November, 1927, in the City of Washington, D. C. This respondent is informed and believes that the Long affidavit was handed to His Honor Justice Siddons on Friday, the 4th day of November, 1927, and that he (re-
35 spondent) has never seen the original of said affidavit and did not see a copy of it until the morning of Saturday the 5th day of November, 1927, in the City of New York; and this respondent further says that he and as far as he is informed W. J. Burns, did not know that the said operative's real name was McMullin and not Long until November 12, 1927.

14.

This respondent denies that daily reports of the information obtained by the said operatives were made to the headquarters of the Agency in the City of New York; but, on the contrary, this respondent states that no reports, original or otherwise, of said investigation were mailed or sent to the New York office of the Agency until Saturday, October 29, 1927, when a letter, the original of which is now in the possession of the United States District Attorney, was mailed from Manager Ruddy to this respondent, enclosing reports of operatives up to and including the 27th day of October, 1927, which letter and enclosures did not reach the offices of the Agency in the City of New York until morning of Monday, October 31, 1927, and were not seen by, nor were their contents brought to the attention of, this respondent until after the seizure of the Agency's records by the said District Attorney.

15.

This respondent states that he knew nothing of the report concerning Juror Kern, to which reference is made in the petition, and did not see it until this respondent appeared before the Grand Jury in the City of Washington, on November 7, 1927; and that he did not see or know the contents of the report concerning the juror Kidwell, to which reference is also made in said petition, until
36 after the seizure of the records of the Agency by the said District Attorney on October 31, 1927. This respondent is informed and believes and avers it to be a

tives of the Agency concerning the jurors Kern and Kidwell and can find nothing therein which calls for his disapproval or which, as he is advised, was unlawful or that could constitute a contempt of this honorabe court. This respondent is informed and believes and avers it to be a fact that in the investigation of the said jurors Kern and Kidwell no contact of any kind was had, or attempted to be had with said jurors nor was anything whatsoever done or attempted to be done, which had the effect of interfering with or intimidating said jurors or which had for its purpose the making or procuring any contact with or intimidation of or interference with the said jurors or any of them or could be calculated to have the effect of interfering with or intimidating said jurors, or which did or could constitute a contempt of this honorable court.

Wherefore, having fully answered, this respondent prays that the rule to show cause laid upon him be discharged and the petition dismissed, and that he be adjudged by this honorable court to be "not guilty" of any contempt of the authority of this honorable court.

W. SHERMAN BURNS,
Respondent.

CHAS. A. DOUGLAS,
Attorney for Respondent.

DISTRICT OF COLUMBIA, *ss:*

W. Sherman Burns, being first duly sworn, does on oath depose and say that he has read the foregoing an-
37 swer and return to the rule to show cause by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true and those therein stated upon information and belief he believes to be true.

W. SHERMAN BURNS.

Subscribed and sworn to before me this 5th day of December, 1927.

[Notarial Seal.] GERTRUDE ELLIS,
Notary Public, D. C.

38 Filed December 5, 1927.

* * * * * * *

Separate Answer of Respondent Henry Mason Day to the Petition and the Rule to Show Cause and Motion to Dismiss Said Petition and Discharge Said Rule.

Comes now the respondent, Henry Mason Day, and for answer to the Petition of the United States and the rule to show cause issued herein, and by way of motion to dismiss said petition and discharge said rule, shows unto the Court as follows:

1. The said petition does not allege facts sufficient in law to confer jurisdiction upon this court to adjudge the respondent guilty of contempt.

2. The said petition fails to allege facts sufficient as matter of law to charge this respondent with contempt of court.

3. The facts alleged in said petition are insufficient as matter of law to charge misbehavior by this respondent in the presence of the court or so near thereto as to obstruct the due administration of justice.

4. The said petition does not allege facts showing or even tending to show that the respondent has been guilty of acts or conduct in any wise impeding or tending to impede the due administration of justice.

5. This court is without jurisdiction to try this respondent or to adjudge him guilty of contempt of this court upon the allegations of said petition.

6. The court is without jurisdiction to entertain said petition or to make any adjudication thereon, because said petition is lacking in necessary and essential allegations showing that this respondent has been guilty of misbehavior in the presence of the court or so near thereto as to obstruct or impede the due administration of justice.

Wherefore, the respondent moves the court to dismiss said petition and to discharge the rule issued thereon against this respondent.

Further answering said petition and the rule to show cause issued thereon, without waiving but expressly reserving and insisting upon the deficiencies and lack of neces-

sary allegations in said petition, respondent admits
39 the averments contained in the first page of the petition and in the first ten lines of the second page thereof.

He has no knowledge of what actuated the Court in finally discharging said Jury of the further consideration of the cause except what he has learned from hearsay and newspaper accounts, and has no knowledge other than hearsay and newspaper accounts of what charges, if any, had been made concerning the operatives of the William J. Burns International Detective Agency of New York.

He admits that on October 18, 1927 he was the Vice-President of the Sinclair Exploration Company, admits that Sheldon Clark was then Vice-President of the Sinclair Refining Corporation, denies that each of said corporations was then controlled by Harry F. Sinclair through stock ownership, admits that he was directed by Harry F. Sinclair to engage the services of the William J. Burns International Detective Agency, admits that he was to supervise the activities and receive reports from diverse operatives of said Detective Agency, and forward the same to Harry F. Sinclair if this respondent thought it necessary or advisable so to do.

This respondent and Harry F. Sinclair at the time had reason to believe and did believe that during the trial of the said cause attempt would be made, during recesses of Court and while the jurors were separated and out of the presence of the Court, to unlawfully influence and tamper with the members of the jury for the purpose of producing an unjust verdict. As the representative, friend and business associate of Harry F. Sinclair, this respondent, after consultation with him and instructions from him, did take part in the employment of the said Burns Internation Detective Agency, as he had a right to do, and this respondent did, as he had a right to do, give instructions to representatives of the said Burns International Detective Agency who were in charge of its operatives, to observe as far as they lawfully could, what persons, if any, came in contact with the said jurors during the recesses of Court, and to detect, so far as it was lawfully possible so to do, whether any person or persons, endeavored or undertook improperly and unlawfully to approach and communicate with any of said

jurors for the purpose of improperly influencing them in the decision of the said cause.

This respondent instructed those connected with
40 the said Burns International Detective Agency, with whom he conferred and to whom he gave instructions as follows and not otherwise:— Under no circumstances was any juror to be addressed or communicated with, no juror should be approached in such proximity as that he would know or suspect that he was being observed, and that the doings of the Burns International Detective Agency and its operatives and employees should be confined utterly and solely to efforts to discover the identity, as far as it could lawfully be done, of such persons, if any, as approached them or addressed them during the recesses of Court on the streets or any other public places.

This respondent admits that in pursuance of his instructions, the officers and representatives of the Burns International Detective Agency did assemble certain of its operatives in the City of Washington to carry out the directions which, as aforesaid, were given by this respondent; this respondent has no knowledge whether William J. Burns actively engaged in conducting the affairs of the said Burns International Detective Agency, has no knowledge of the holder of any of the stock of said agency, has no knowledge whether William J. Burns visited the City of Washington with regard to the operations of the agents of the William J. Burns International Detective Agency; he has no knowledge whether W. Sherman Burns procured a false affidavit as alleged on page 6 of the Petition, he has no knowledge, save hearsay and through newspaper accounts, whether any affidavit such as referred to on said page of the Petition was presented to the Honorable Frederick L. Siddons, nor has he any knowledge of the intentions with which any such affidavit was presented.

He has no knowledge save hearsay, whether, while juror Kern was serving as such, said operatives proceeded to investigate any and all of said encumbrances upon the home of said juror in the City of Washington, or whether the operatives so detailed investigated the Land Records of the District of Columbia; he denies that any of said operatives so reported to him and denies that any report ever submitted to him concluded with or contained the state-

ment that efforts would be made to ascertain the name of those holding trust notes secured upon said juror Kern's home. He has no knowledge other than hearsay, whether any of said operatives investigated the neighbors of the said juror Kern, he admits that certain of said operatives, reported concerning J. E. Vogts, as set forth on page 7 of the Petition. He has no knowledge save hearsay
41 whether an investigation was conducted by the said operatives, with regard to the brother or father of juror Kidwell, he admits that certain of said operatives reported in writing concerning the brother or father of said juror Kidwell as set forth on page 7 of the Petition.

He admits that certain of said operatives reported that juror Glasscock was seen in conference with a person at a remote place outside of the City of Washington for a period of fifteen or twenty minutes; he has no knowledge that such report was false; he has no knowledge that another report of another operative shows such person to be an employee of the Department of Justice. He has no knowledge save hearsay, whether all said operatives engaged in the work aforesaid reported daily in writing to Charles G. Ruddy, he has no knowledge save hearsay whether said Ruddy caused said reports to be typewritten, or whether the originals of said reports were sent to W. Sherman Burns in New York, he admits that the contents of a number of such reports were reported to him. He admits that he knew that the criminal prosecution of United States v. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324 was being conducted in the Supreme Court of the District of Columbia at the time; he admits that said prosecution was not finished; that said jurors were sworn jurors trying the issues in said cause.

He denies that Harry F. Sinclair, or anyone else, ordered or directed or induced him to engage the services of the William J. Burns International Detective Agency, or to supervise the activities and receive reports from any operatives of said Detective Agency, or to forward any such reports to Harry F. Sinclair, or any other person, for the object or purpose to bribe, or intimidate, or influence the said jurors, or any of them, or to do anything calculated to interfere with or impede said jurors, or any of them, in the unbiased discharge of their duties in the trial of said cause,

or to influence, pervert, impede, or prevent said jurors or any of them, in the discharge of their duties as jurors, or to impede, pervert or prevent the due administration of justice in said Court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants
42 therein, or to disagree as to the said issues, or by unlawfully spying upon the said jurors, or any of them, for the purpose of concocting false charges against one or more of the said jurors in case such a course should seem advantageous to said defendant in said cause, with a view of bringing about a mistrial of the cause aforesaid, or otherwise accomplishing such purpose.

He avers that he never did, either directly or indirectly, nor did he counsel, advise, or suggest to any person, or persons, that they, such persons, or anyone else, bribe or attempt or undertake to bribe, intimidate, attempt or undertake to intimidate, influence, attempt, or undertake to influence said jurors, or any of them, nor do anything calculated to interfere with or impede said jurors, or any of them, in the unbiased discharge of their duties in the trial of said cause, or influence, pervert, impede or prevent said jurors in the discharge of their duties as jurors, or impede, pervert or prevent the due administration of justice in said Court in the trial of said criminal prosecution, in any way or manner whatsoever.

He avers that he did nothing unlawful, counselled or advised nothing unlawful concerning the said jurors, or any of them, or concerning the Burns International Detective Agency, or any of its officers, employees, agents or operatives, and neither did, nor counsel, nor advise, nor was he party to, directly or indirectly, any conduct, act, project, undertaking, purpose or intention which was in any wise unlawful.

He is informed and believes and avers on information and belief that none of the officers, representatives, agents, operatives or employees of the Burns International Detective Agency who were concerned in the premises, did or contemplated doing or intended or attempted to do, anything which was improper or unlawful in the premises.

Wherefore, he prays that the rule be discharged and the Petition dismissed.

DANIEL THEW WRIGHT,
JOHN W. H. CRIM,
Attorneys for Henry Mason Day.

43 DISTRICT OF COLUMBIA, *ss:*

Henry Mason Day, being first duly sworn, says that he is the respondent named as such in the foregoing answer, that the facts stated therein as of his own knowledge are true and that those stated on information and belief he verily believes to be true.

HENRY MASON DAY.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1927.

[NOTARIAL SEAL.] AMELIA V. ERNST,
Notary Public, D. C.

44 Supreme Court of the District of Columbia.

Tuesday, February 21" A. D. 1928.

The Court resumes its session pursuant to adjournment: Mr. Justice Siddons, presiding.

* * * * * * *

Come again the parties aforesaid, in manner as aforesaid; and thereupon the hearing is resumed; whereupon the petition that the above named respondents be adjudged in contempt is by the Court sustained and the respondents are accordingly adjudged in contempt of Court; and thereupon it is demanded of each respondent what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that for his said offense the respondent W. Sherman Burns pay a fine of One Thousand ($1,000.) Dollars, that the respondents Harry F. Sinclair, William J. Burns and Henry Mason Day be each imprisoned in the Washington Asylum and Jail, the respondent Sinclair for the period of Six (6)

Months, the respondent William J. Burns for the period of Fifteen (15) Days and the respondent Day for the period of Four (4) Months, said sentences to take effect from and including the date of arrival of said respondents, Sinclair, William J. Burns and Day, at said Asylum and Jail; and thereupon each respondent by his attorneys notes an appeal to the Court of Appeals of the District of Columbia, from the judgment of the Court in this case; whereupon the Court fixes the amount of bond for costs on appeal at One Hundred ($100.) Dollars, or Fifty ($50.) Dollars in cash, and the bond for the appearance of the respondent Sinclair at Five Thousand ($5,000.) Dollars for the respondent Day at Three Thousand ($3,000.) Dollars,
45 for the respondents William J. Burns and W. Sherman Burns at One Thousand ($1,000.) Dollars each; whereupon the respondent Sinclair enters into a recognizance in the sum of Five Thousand ($5,000.) Dollars with the United States Fidelity and Guaranty Co. as surety, the respondent Day enters into a recognizance in the sum of Three Thousand ($3,000.) Dollars with the United States Fidelity and Guaranty Co. as surety, the respondents William J. Burns and W. Sherman Burns each enter into a recognizance in the sum of One Thousand ($1,000.) Dollars with M. S. Kronheim as surety, each respondent to forthwith surrender himself to the custody of the Marshal of the District to be dealt with and proceeded against according to law in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, or if he, the said respondent, depart the court without leave.

Memoranda

February 21, 1928.—Recognizance of Harry F. Sinclair fixed at $5,000, taken with U. S. Fidelity and Guaranty Co. as surety.

Recognizance of Henry M. Day fixed at $3,000, taken with U. S. Fidelity and Guaranty Co. as surety.

Recognizance of William J. Burns and W. Sherman Burns fixed at $1,000 each, taken with W. S. Kronheim as surety.

46 *Notice of Appeal by Harry F. Sinclair.*

Filed February 24, 1928.

* * * * * * *

Now comes the respondent, Harry F. Sinclair, and gives notice that he appeals from the judgment of the Court entered against him in the above entitled cause, on February 21, 1928.

HARRY F. SINCLAIR,
By GEORGE P. HOOVER,
MARTIN W. LITTLETON,
His Attorneys.

Service of copy acknowledged this 24 day of February, 1928.

PEYTON GORDON,
U. S. Attorney.

Notice of Appeal by Henry Mason Day.

Filed February 24, 1928.

* * * * * * *

Now comes the respondent, Henry Mason Day, and gives notice that he appeals from the judgment of the Court entered against him in the above entitled cause, on February 21, 1928.

HENRY MASON DAY,
By DANIEL THEW WRIGHT,
PHILIP ERSHLER,
His Attorneys.

Service of copy acknowledged this 24 day of February, 1928.

PEYTON GORDON,
U. S. Attorney.

47 *Memoranda.*

February 24, 1928.—$50 deposited on behalf of Day in lieu of appeal bond.

March 9, 1928.—Motion for extension of time for twenty days from March 15, 1928, filed.—Time to file Bill of Exceptions extended 20 days from March 15, 1928.

March 13, 1928.—$50 deposited on behalf of H. F. Sinclair in lieu of appeal bond.

Notice of Appeal by William J. Burns and W. Sherman Burns

Filed March 15, 1928.

* * * * * * *

Peyton Gordon, Esquire, Attorney for the United States:

You are hereby notified that the respondents William J. Burns and W. Sherman Burns have taken and noted an appeal to the Court of Appeals of the District of Columbia from the order of this court overruling motion to quash the petition and discharge the rule and the order overruling the motion to dismiss the above entitled cause and the petition therein; and from the findings of fact made by the trial court herein and from the final order and judgment adjudging the said W. Sherman Burns and William

48 J. Burns guilty of contempt of court herein.

By DOUGLAS, OBEAR & DOUGLAS,
By JO. V. MORGAN,
WILLIAM J. BURNS and
SHERMAN BURNS,
Attorneys for Respondents, William J. Burns and W. Sherman Burns.

Service of a copy of the foregoing notice acknowledged this 15 day of March, 1928.

PEYTON GORDON,
U. S. Attorney.

Memoranda.

March 15, 1928.—Deposit of $50.00 in lieu of cost bond on appeal by William J. Burns.

Deposit of $50. in lieu of cost bond on appeal by W. Sherman Burns.

April 4, 1928.—Time to file Bill of Exceptions extended 20 days from April 7, 1928.

April 24, 1928.—Time to file Bill of Exceptions extended 20 days from May 1, 1928.

49 *Order Extending Time to File Transcript of Record.*

Filed May 2, 1928.

* * * * * * *

On consideration of the petition for an extension of time to file the transcript of record in this Court in the above entitled cause, It is ordered by the Court that said time be, and the same is hereby, extended to and including August 1, 1928.

per Mr. JUSTICE ROBB
April 28, 1928.

The Chief Justice did not participate in this order.

A true Copy.

[SEAL.] Test. HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Memorandum.

May 23, 1928.—Bill of exceptions filed.

50 *Notice of Submission of Bill of Exceptions*

Filed May 23, 1928.

* * * * * * *

To Leo A. Rover, Esquire, United States Attorney:

Please take notice that the Bill of Exceptions in the above entitled cause, of which the attached is a copy, has this day

been filed and will be submitted to Mr. Justice Frederick L. Siddons for settlement and approval on Tuesday, June 26, 1928, at ten o'clock A. M. or as soon thereafter as counsel may be heard.

GEORGE P. HOOVER,
MARTIN W. LITTLETON,
CHARLES A. DOUGLAS,
JO. V. MORGAN,
DANIEL THEW WRIGHT,
Attorneys for Respondents.

Service of the foregoing notice and a copy of the Bill of Exceptions in the above entitled cause acknowledged this 23rd day of May, 1928.

LEO A. ROVER,
United States Attorney.

51 *Designation of Record.*

Filed May 23, 1928.

* * * * * * *

Comes now Harry F. Sinclair, William J. Burns, W. Sherman Burns and Henry Mason Day, the appellants in the above entitled cause and designate the parts of the record which they desire to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Petition for rule to show cause.
2. Rule to show cause.
3. Answer of Harry F. Sinclair to petition, rule and motion to dismiss the petition.
4. Answer of William J. Burns to petition, rule and motion to dismiss the petition.
5. Answer of W. Sherman Burns to petition, rule and motion to dismiss the petition.
6. Answer of Henry Mason Day to petition, rule and motion to dismiss the petition.
7. Memo: Order sustaining prayers of petition and adjudging respondents in contempt.
8. Memo: Sentence of Harry F. Sinclair to six months in jail.

9. Memo: Sentence of Henry Mason Day to four months in jail.

10. Memo: Sentence of W. Sherman Burns to pay a fine of $1,000.

11. Memo: Sentence of William J. Burns to fifteen days in jail.

12. Memo: Appeal noted in open court, bond fixed at $100 with leave to deposit $50 in cash in lieu of
52 bond.

13. Memo: Recognizance of Harry F. Sinclair fixed at $5,000 taken with U. S. Fidelity and Guaranty Company as surety.

14. Memo: Recognizance of Henry Mason Day fixed at $3,000 taken with U. S. Fidelity and Guaranty Company as surety.

15. Memo: Recognizance of W. Sherman Burns and William J. Burns fixed at $1,000 each and taken with W. S. Kronheim as surety.

16. Notice of Harry F. Sinclair of appeal and acknowledged by U. S. Attorney.

17. Notice of Henry Mason Day of appeal and acknowledged by U. S. Attorney.

18. Memo: Deposit of $50 by D. T. Wright in lieu of cost bond on appeal for Henry Mason Day.

19. Memo: Motion for extension of time in which to file bill of exceptions extended twenty days from March 15, 1928.

20. Memo: Deposit of $50 in cash by George P. Hoover in lieu of cost bond on appeal by Harry F. Sinclair.

21. Memo: Deposit of $50 by Chas. A. Douglas in lieu of cost bond on appeal by William J. Burns.

22. Memo: Deposit of $50 by Chas. A. Douglas in lieu of cost bond on appeal by W. Sherman Burns.

23. Notice of appeal by William J. Burns and W. Sherman Burns, and acknowledgment by U. S. Attorney.

24. Memo: Order extending the time in which to file the bill of exceptions twenty days from April 7, 1928.

25. Memo: Order extending time in which to file bill of exceptions extended twenty days from May 1, 1928.

26. Certified copy of order of April 28, 1928, of the
53 Court of Appeals extending the time for the filing of the transcript of record in the Court of Appeals to August 1, 1928.

27. Memo: Bill of exceptions filed.

28. Notice of submission of bill of exceptions for settlement and approval.

29. Memo: Bill of exceptions settled and approved.

30. Bill of exceptions.

31. Assignments of error.

32. This designation.

GEORGE P. HOOVER,
MARTIN W. LITTLETON,
CHAS. A. DOUGLAS,
JO. V. MORGAN,
DANIEL THEW WRIGHT,
Attorneys for Respondents.

Service of copy of the foregoing designation of record acknowledged this 23rd day of May, 1928.

LEO A. ROVER,
United States Attorney.

54 *Assignments of Errors of Henry Mason Day.*

Filed June 8, 1928.

* * * * * * *

Now comes the defendant, Henry Mason Day, and makes the following his assignments of errors in the above entitled cause:

1. The Court erred in overruling the motion to dismiss the petition of the United States undertaking to charge an alleged contempt.

2. The Court erred in the cross-examination of the witness Arthur Joseph Sullivan in ruling out the witness' answer "No sir" to the question "Did you have any thought of undertaking to approach a juror through Burr?

3. The Court erred in sustaining the objection put on cross-examination to the witness Sullivan to the question "At the time had you any suspicion that anybody on behalf of any of these respondents might endeavor or was endeavoring to make contact with any juror?"

4. The Court erred in sustaining the objection to the question put to the witness Sullivan on cross-examination "Had you in mind at that time that persons inimical and hostile to some of the respondents might endeavor to do that?"

5. The Court erred in overruling the motion of the defendants to strike out all of the testimony of the witness Kidwell with regard to the man going to the tree and going to the bench and the conversation had between this unidentified man and the witness, and anything that occurred between them with reference to Mr. Mackintosh.

6. The Court erred in overruling the objection to the question "During the time that you were a juror in the Fall-Sinclair Case did you know about a restaurant called Rock's Restaurant?" This to witness Kidwell in cross-examination.

55 7. The Court erred in sustaining the objection during the cross-examination of the witness Ackers to the question "How did you get out of jail?"

8. The Court erred in the cross-examination of the witness Ackers in sustaining the objection to the question "How much?"

9. The Court erred in refusing to receive the testimony offered by the defendants as proffered on page 646 of the Bill of Exceptions, as follows: "That there was a general custom of the Department of Justice and the District Attorneys of the United States throughout the United States acquiesced in continuously for more than thirty years to shadow through its employees and representative jurors, both entire juries and members of the panel, keep them under surveillance during all of the time they were not in actual attendance upon the Court, to observe them as closely as possible when they were abroad from the Court Room from their places of business and from their residences and watch their residences and after they had gotten home at night, when there was no reason to suspect any lack of integrity upon the part of any juror or to suspect that any person was endeavoring to improperly approach them."

10. The Court erred in overruling the motion of the respondent at the close of the Government's evidence to discharge the rule and dismiss the petition.

11. The Court erred in sustaining the objection put by the respondents on direct examination to the witness Felix Quigley as shown on page 648 of the record, "And what was the practice?" and also in excluding the evidence proffered therewith.

12. The Court erred in excluding the evidence offered by the respondent Day as appears on page 650 of the Bill of Exceptions, as follows: "We will prove, if this and other witnesses were permitted to answer, that for a time so long as the memory of man runneth not to the contrary, in the City of New York, it has been a continuous and unbroken custom of the United States District Attorney in the trial of criminal cases in the City of New York to keep under surveillance jurors just as was done in this case at bar; that prior to the fall of 1927 Mr. Day had spent considerable time in the City of New York, that the custom which I have spoken of in the City of New York was a matter of common knowledge, and that Mr. Day knew
56 of that custom in the fall of 1927 before the Burns Agency was employed in this case."

13. The Court erred in sustaining the objection put to the witness Jentzer as shown on page 659 of the record in direct examination "Do you know whether or not the Department of Justice through its agents has shadowed United States judges?"

14. The Court erred in sustaining the objection to the question put to the witness Jentzer on direct examination "Did you ever, or not, shadow in the District of Columbia a justice of a United States Court of the District of Columbia?" and in excluding the evidence proffered therewith.

15. The Court erred in sustaining the objection to the questions put to the witness W. J. Burns as shown on page 680 of the Bill of Exceptions, "Do you know whether or not there existed in the Department of Justice a custom, with respect to shadowing and observing of jurors in cases pending in the courts of the United States, of observing jurors after they were sworn?" and "Do you know whether or not there was such a custom?" and "How long has such a custom been maintained?" and "Had or had not that custom been universal throughout the United States in the courts of the United States during that time?"

16. The Court erred in excluding the evidence offered by the respondent as shown on page 771 of the Bill of Exceptions, as follows: "that he was continually followed on the street, up about clubs, and going to and from his home, by men whom he did not know by name or by identity, but whose physiognomy and physical identity he knew because of the fact that the same man would follow him for periods of a few days, and then another man, who had followed him before, took up the following and followed him again for a few days; and that this occurred innumerable times, and he reported it to Mr. Sinclair; that he has observed on numberous occasions continuously, in New York, in Washington and other cities, about hotels and clubs and business places, and about their homes. That is the proffer of proof that I make."

17. The Court erred in sustaining the objection to the question put to the respondent Day in a direct examination: "On that day did you know whether or not it was the custom of the United States District Attorney in the City of New York to shadow, through representatives of the Department of Justice, jurors engaged in the trial of
57 criminal cases in the United States Courts in that City?"

18. The Court erred in sustaining the objection to the question put to the witness Day on direct examination as follows: "At that time was it or was it not a matter of public common knowledge in the City of New York that the custom of the United States District Attorney in the trial of criminal cases in the United States Courts in the City of New York was to shadow juries after they were empanelled and sworn, and during the trial?"

19. The Court erred in sustaining the objection to the question put to the witness Day on direct examination as follows: "Did you or did you not know of instances in New York, through public discussion, in which jurors had been followed, jurors empanelled in the United States Courts there, by representatives of the Government and the Department of Justice, during the trial?"

20. The Court erred in sustaining the objection to the question put to the witness Day on direct examination as follows: "What was that incident?"

21. The Court erred in refusing to hear and receive evidence offered in mitigation, as shown on page 813 of the Bill of Exceptions as follows: "May it please your Honor, before there is consideration of the question of penalty, I am referring to what your Honor has already said in your opinion this afternoon as to the evidence that was offered as to the custom of the Department of Justice, I want now to reoffer that evidence on the question of mitigation, as it was offered during the main case, and I make the tender now again so that it may not be thought that I have overlooked it."

22. He adopts the Assignments of Errors made by the other respondents which are not herein specifically copied.

23. The Court erred in adjudging the respondent guilty.

DANIEL THEW WRIGHT,
PHILIP ERSHLER,
Attorneys for Henry Mason Day.

58 *Memoranda.*

June 9, 1928.—Time to file amendments to proposed bill of exceptions extended for fifteen days from June 9, 1928.

June 27, 1928.—Time to file amendment to proposed bill of exceptions extended for fifteen days from June 27, 1928.

July 11, 1928.—Motion for extension of time for submitting bill of exceptions to July 28, 1928, filed.

Fiat of Bailey, J., granting motion for extension of time for submitting bill of exceptions.

59 *Assignments of Error of the Respondent Harry F. Sinclair.*

Filed July 12, 1928.

* * * * * * *

Comes now the respondent Harry F. Sinclair and makes the following as and for his assignments of error in the above-entitled cause:

1. The Court erred in denying and overruling the motion of the respondent Sinclair to dismiss the petition of the United States and to discharge the rule to show cause, for the following reasons:

(a). Said petition does not allege facts sufficient in law to confer jurisdiction upon the court to adjudge the respondent Sinclair guilty of contempt.

(b). Said petition fails to allege facts sufficient as matter of law to charge respondent Sinclair with contempt of court.

(c). The facts alleged in said petition are insufficient as matter of law to charge misbehavior by respondent Sinclair in the presence of the court or so near thereto as to obstruct the due administration of justice.

(d). Said petition does not allege facts showing or even tending to show that respondent Sinclair has been guilty of acts or conduct in any wise impeding or tending to impede the due administration of justice.

60 (e). The court is without jurisdiction to try respondent Sinclair or to adjudge him guilty of contempt of said court upon the allegations of said petition.

(f). The court is without jurisdiction to entertain said petition or to make any adjudication thereon, because said petition is lacking in necessary and essential allegations showing that this respondent has been guilty of misbehavior in the presence of the court or so near thereto as to obstruct or impede the due administration of justice.

2. The court erred in overruling the motion of the respondent Sinclair to dismiss the petition and discharge the rule at the close of the case in chief by the United States, for the reasons set forth in Assignment of Error No. 1, and for the following reasons:

(a). The evidence offered by the United States was insufficient as matter of law to establish the charge of contempt of court.

(b). None of the allegations of purpose or design alleged in the petition were at all supported by any evidence introduced by the United States.

(c). There was not a scintilla of evidence showing that any person proceeding from or connected with any of the respondents ever came in contact with a juror, ever approached a juror, ever conversed with a juror, or ever sought to approach or converse with a juror; or that a single juror was ever conscious of being shadowed.

(d). No act of respondents obstructed or directly or indirectly tended to obstruct the administration of justice.

61 (e). By the petition filed in the cause the United States had undertaken to charge the respondents with a conspiracy to commit a criminal contempt and there was a variance between the allegation of said petition and the evidence offered by the United States in support thereof.

(f). Jury shadowing *per se* is not a violation of law, and therefore not a contempt of court.

(g). The submission of the McMullin affidavit was not contempt of court and could not be contempt of court as there was no trial then pending, and no action was requested with respect to said affidavit.

(h). In and by said petition the United States undertook the prosecution of the respondents for a criminal offense, based upon Section 135 of the United States Penal Code.

3. The court erred in denying and overruling the motion of the respondent Sinclair to dismiss the petition and discharge the rule at the close of the whole evidence, for the reasons set forth in Assignment of Error No. 2.

4. The court erred in making conclusions of law in finding the respondent guilty of contempt.

5. The court erred in making findings of fact in determining the respondent guilty of contempt of court.

6. The court erred in adjudging the respondent guilty of contempt.

7. The court erred in not adjudging that the acts done by the respondent Harry F. Sinclair, or those acts authorized by him to be done, neither obstructed nor tended to obstruct the due administration of justice so as to constitute contempt of court.

8. The court erred in denying the motion of re-
62 spondents to strike out testimony of the witnesses Annella L. Bailey and Bernice K. Heaton in regard to the conversations they were said to have had with Juror Kidwell in the ante-room of the courthouse in regard to "keeping out of trouble," on the ground that the incident which gave rise to the actions and activities of Juror Kidwell and the conversations with and remarks he is said to have made to his fellow-jurors was in no wise shown to have been connected with any of the respondents.

9. The court erred in denying the motion of the respondent to strike out all the testimony of the witness Gardner P. Grenfell with regard to contradiction of the reports of the operatives of the William J. Burns International Detective Agency; also all the testimony of the witness Annella L. Bailey tending to prove the falsity of said reports relating to her; all the testimony of the witness Edward J. Kidwell, Jr., which tends to disprove the accuracy of the said reports relating to his movements, on the ground that said testimony was incompetent, irrelevant and immaterial.

10. The court erred in denying the motion of the respondent to strike out United States Exhibit No. 170, being the report of Operative O'Reilly of the William J. Burns International Detective Agency, for October 28, 1927, dealing with the so-called Kern investigation, on the ground that said report never came to the attention of the respondent Day or the respondent Sinclair.

11. The court erred in denying the motion of the respondent, renewed at the close of the whole case, to strike out the testimony of the witness Annella L. Bailey and the witness Bernice K. Heaton in regard to the conversations they were said to have had with Juror Kidwell in the ante-
63 room of the courthouse in regard to "keeping out of trouble," on the ground that the incident which gave rise to the actions and activities of Juror Kidwell and the conversation with and remarks he is said to have made to his fellow-jurors was in no wise shown to have been connected with any of the respondents.

12. The court erred in denying the motion of the respondent, made at the close of the whole case, to strike out the testimony of the witness Bernice K. Heaton, to the effect that she was present during the trial of the Sinclair-Fall Case in the conference room of the jurors when the subject of the jurors being watched, shadowed or followed was discussed.

13. The court erred in sustaining the objection of the United States to the question propounded to the witness John R. Kissell, as to whether he as a special agent of the United States had shadowed jurors in the trial of cases, and in denying the proffer of the respondents to prove by said

witness that he, as an investigator of the Department of Justice between November, 1921, and December, 1925, had shadowed jurors who were serving in cases being prosecuted by the United States in the District of Columbia, and in other judicial districts of the United States.

14. The court erred in sustaining the objection of the United States to the questions propounded to the witness Felix Quigley as to what was the practice of the United States with respect to having investigators of the Department of Justice keep jurors under surveillance while they were serving as jurors in cases being prosecuted by the United States.

15. The court erred in sustaining the objection of the United States to the question propounded to the witness Felix Quigley as to whether he, as an investigator of
64 the Department of Justice, had ever taken part in the actual shadowing of a jury during the trial of a case being prosecuted by the United States.

16. The court erred in denying the proffer made by the respondents to prove by the witness Felix Quigley that, during the time he was serving as an investigator for the Department of Justice, from March, 1922, to April 1, 1927, he, in company with other investigators of said Department of Justice, kept under surveillance jurors serving in cases being prosecuted by the United States in various judicial districts of the United States, and to prove that it was the general custom and practice of the United States to have its investigators of the Department of Justice keep jurors under surveillance while they were serving as such.

17. The court erred in sustaining the objection of the United States to the question propounded to the witness Daniel F. Dwyer as to what was the practice in the Department of Justice respecting the shadowing of jurors while cases were actually on trial.

18. The court erred in denying the proffer made by the respondents to prove by the witness Daniel F. Dwyer that it was the practice and custom of the Department of Justice and the United States District Attorneys throughout the United States for many years to shadow jurors in cases in which the United States was interested, whenever the District Attorney in charge deemed it advisable so to do and

without any relation as to whether or not any such District Attorney had reason to or did suspect any or all of said jurors.

19. The court erred in denying the proffer made by the respondents to prove by the witness Daniel F. Dwyer that he had as an investigator in the Department of Justice actually taken part in the shadowing of jurors in
65 cases being prosecuted by the United States in various judicial districts of the United States.

20. The court erred in sustaining the objection of the United States to the question propounded to the witness Mortimer J. Davis as to whether, as an investigator or special agent of the United States, he was employed in the shadowing of a petit jury in a case in which the United States was a party during the actual trial of said case.

21. The court erred in sustaining the objection of the United States to the question propounded to the witness Mortimer J. Davis as to whether he was familiar with the custom of the Department of Justice with respect to shadowing jurors while cases were actually on trial.

22. The court erred in denying the proffer of the respondents to prove by the witness Mortimer J. Davis that he was familiar with the practice and custom of the Department of Justice with respect to the shadowing of petit jurors in cases in which the United States was an interested party, and that it had been the practice and custom of the Department of Justice and the District Attorneys throughout the United States in the several judicial districts to keep the jurors in such cases under surveillance whenever in the opinion of the District Attorney it was thought advisable so to do without relation to the question of whether there was any reason to suspect the jury or any member thereof.

23. The court erred in denying the proffer of the respondents to prove by the witness Mortimer J. Davis that, as an investigator in the Department of Justice, he was actually engaged in the shadowing of a jury empaneled in the case of United States vs. John L. Phillips, et als., which was tried in the Supreme Court of the District of Columbia in the spring of 1924; and that the investigators of
66 the Department of Justice did during the trial of said case keep said jurors under surveillance.

24. The court erred in sustaining the objection of the United States to the question propounded to the witness Harry J. Jentzer, as to what was the custom of the Department of Justice in the last twenty years with respect to the shadowing of petit jurors in criminal cases being prosecuted by the United States while said cases were actually on trial.

25. The court erred in denying the proffer of respondents to prove by the witness Harry J. Jentzer that it had been the practice and custom of the Department of Justice and the several District Attorneys throughout the United States for the last twenty years in criminal cases being prosecuted by the United States to have the entire jury panel shadowed by investigators of the Department of Justice whenever the United States District Attorney deemed it advisable without regard to the question as to whether there was any suspicion as to any juror.

26. The court erred in denying the proffer of the respondents to prove by the witness Harry J. Jentzer that, as an investigator of the Department of Justice, covering a period of twenty years, he did from time to time, in company with other agents and investigators of the Department of Justice, engage in the shadowing of jurors in cases which were being tried in various judicial districts of the United States.

27. The court erred in sustaining the objection of the United States to the question propounded to the witness William J. Burns, as to whether it is not a fact from his personal knowledge that there existed in the Department of Justice the usage and custom of observing and shadowing jurors in criminal cases prosecuted by the United
67 States, where there was no reason to suspect a lack of integrity on the part of the jury and the jury were unsuspecting of the fact that they were being shadowed.

28. The court erred in denying the proffer made by the respondents to prove by the witness William J. Burns that he had personal knowledge of the fact that there existed in the Department of Justice a usage and custom, covering a period of at least twenty-five years, of shadowing the jurors in criminal cases prosecuted by the United States, where there was no reason to suspect a lack of integrity on

the part of the jury and the jury were unsuspecting of the fact that they were being shadowed.

29. The court erred in sustaining the objection of the United States to the question propounded to the witness W. Sherman Burns as to whether he had ever shadowed jurors before he accepted the employment to shadow the jurors in the Sinclair-Fall trial.

30. The court erred in sustaining the objection of the United States to the question propounded to the witness W. Sherman Burns as to whether, at the time he accepted this employment, he had up to that time ever heard of the legality of shadowing jurors being in doubt or as being a violation of law.

31. The court erred in sustaining the objection of the United States to the question propounded to the witness W. Sherman Burns as to whether when he accepted this employment from Mr. Day he did know of the fact that the United States Government through its District Attorneys had shadowed jurors in original cases while the cases were on trial.

32. The court erred in denying the proffer of the
68 respondents to prove by the witness W. Sherman Burns that he knew of the custom which existed and the practice which had been engaged in by the United States through the Department of Justice and its law officers for thirty-five years or more, of shadowing jurors in original cases when the cases were actually on trial; and that he also knew that in many instances the jury were shadowed when they were aware of the fact that they were being shadowed, and that there were cases where they were shadowed and the operatives or agents were ordered to indicate to the jurors that they were being shadowed, and that there were other instances where the jury did not know they were being shadowed.

33. The court erred in sustaining the objection of the United States to the question propounded to the witness A. Bruce Bielaski as to whether, during the time he was Chief of the Bureau of Investigation of the Department of Justice, did he know as a fact that it was the custom and practice of the Department, upon request being made by special agents in the field or by United States District Attorneys in the several districts of the United States, to assign

men to shadow jurors who were sitting in cases in which the United States was prosecuting individuals or corporations for alleged crimes and offenses against the United States.

34. The court erred in denying the proffer of the respondents to prove by the witness A. Bruce Bielaski that he did know that such a custom and practice existed.

35. The court erred in sustaining the objection of the United States to the question propounded to the witness A. Bruce Bielaski as to whether it is not a fact that during the time he was Chief of the Bureau of Investigation of the Department of Justice, during the period from
69 1912 to 1919, reports were made by men in charge of the Special Agents or by the Special Agents, of the activities of these Special Agents in shadowing jurors who were selected and sworn in criminal cases in which the United States was prosecuting its citizens for allegd violations of the law, and that such reports were brought to the attention of the Attorney General, who was in that office at the time such reports were received in the Department of Justice.

36. The court erred in denying the proffer of the respondents to prove by the witness A. Bruce Bielaski that, if permitted to answer the question incorporated in the preceding Assignment of Error, he would testify that such investigations were made and reports submitted in the manner stated in said question.

37. The court erred in sustaining the objection of the United States to the questions propounded to the witness Bielaski as to whether the several Attorneys General of the United States, who were in office during the time the witness was in office in the Bureau of Investigation of the Department of Justice, knew of or approved the custom of shadowing panels of jurors by the representatives of the United States, and in denying the proffer made by the respondents that, if the witnesses were permitted to answer, he would testify in the affirmative.

38. The court erred in sustaining the objection of the United States to the question propounded to the witness Dan E. Taton as to whether, during the time he was a special agent in the Bureau of Investigation of the Department of Justice, did he actually shadow jurors who had been

selected and sworn in cases being tried in the federal courts where persons or corporations were being prosecuted
70 by the United States for alleged offenses against the United States, and to the proffer made by the respondents that, if the witness were permitted to answer, he would answer "Yes."

39. The court erred in sustaining the objection of the United States to the question propounded to the witness Dan E. Tatom as to whether he knew as a fact that in Pittsburgh and New York, during the time he was employed in those places as a Special Agent, it was the custom and practice of the Department of Justice and the United States District Attorneys to have Special Agents of the Department of Justice shadow jurors in the trial of cases in which the United States was prosecuting individuals and corporations; and in denying the proffer of the respondents to prove by said witness that he did know the practice and that it was the practice so to do.

40. The court erred in denying the proffer of the respondents to prove by the witness Dan E. Tatom that he was engaged with other investigators of the Department of Justice in shadowing jurors engaged in the trial of cases in New York City and in Pittsburgh, and that said jurors were shadowed in going from their homes to court, after they left court, in going to their homes, and that the shadowing continued until the jurors had retired at night in their respective homes.

41. The court erred in sustaining the objection of the United States to the question propounded to the witness Dan E. Tatom as to whether it is not a fact that when a District Attorney would make a request for an assignment of agents to do the work of shadowing jurors in cases on trial, they were sent in response to his request without the District Attorney giving any reasons therefor, or
71 making any showing as to grounds for his suspicion, if he had any; and in denying the proffer of respondents to prove by said witness that such was the fact, and that it was the practice and custom of the Department of Justice to comply with the request of the District Attorney without making any inquiry as to the grounds for such request.

42. The court erred in sustaining the objection of the

United States to the question propounded to the witness Walter C. Foster as to whether during the time he was employed in the Department of Justice, and particularly during the time he was the Agent in Charge in Philadelphia and Pittsburgh, did he know as a fact that it was the practice and custom of the Department of Justice to have agents from the Bureau of Investigation shadow jurors in cases in which the United States was prosecuting corporations and individuals, and that the shadowing was close, intimate surveillance of the jurors during the trial; and in denying the proffer of the respondents to prove by said witness that he did know of such practice and custom, and that said practice was indulged in during the time he was employed in the Department of Justice.

43. The court erred in sustaining the objection of the United States to the question propounded to the witness Walter C. Foster as to whether he knew as a fact that special agents engaged in shadowing jurors who were sitting in cases in which the United States was prosecuting individuals and corporations, such special agents would make written reports to him as Agent in Charge, making such reports daily, showing the details of the shadowing of the jurors, and that these reports were made in duplicate and would be sent to the United States Attorney in
72 the District and other copies of the reports would be sent either to the Attorney General, or the Chief of the Bureau of Investigation in the District of Columbia; and in denying the proffer of the respondents to prove by said witness that such was the fact.

44. The court erred in sustaining the objection of the United States to the question propounded to the witness Walter C. Foster respecting the shadowing of jurors in the case of United States vs. McConnell in the District Court of Pennsylvania, sitting in the City of Philadelphia, and in denying the proffer of the respondents to prove by said witness the facts and circumstances relating to the said shadowing of jurors in said case.

45. The court erred in sustaining the objection of the United States to the question propounded to the witness Walter C. Foster respecting the shadowing of the jury in the case commonly known as the Gray's Harbor Shipbuilding Case, which was tried in the United States Court sitting

in the City of Seattle, State of Washington, in the year 1920; and in denying the proffer of respondents to prove by said witness the facts and circumstances relating to the shadowing of the jury in said case.

46. The court erred in sustaining the objection of the United States to the question propounded to the witness Walter C. Foster as to whether in the cases of shadowing as to which he had already been interrogated the practice and custom relating to such shadowing was not limited to cases in which there was suspicion on the part of the prosecuting attorney that some person might try to corrupt the jury; and in denying the proffer of respondents to prove by said witness that, if permitted to testify, he would say that they were not limited to cases in which there was suspicion.

47. The court erred in sustaining the objection of
73 the United States to the question propounded to the witness Edgar B. Speer as to whether during the time he was in the Department of Justice did he have knowledge of the fact that in cases in which the United States was prosecuting individuals and corporations there was the custom and practice of the United States to have the Special Agents from the Department of Justice shadow jurors who were engaged in the trial of these cases, when the jurors were not in court and were not locked up by order of the Court; and in denying the proffer of the respondents to prove by said witness that, if permitted to testify, he would state that he was familiar with the custom, and that the practice and custom did exist.

48. The court erred in sustaining the objection of the United States to the question propounded to the witness Edgar B. Speer as to whether he did know as a fact that when Special Agents were employed in shadowing jurors who were not locked up while in the trial of cases, such shadow men made written reports to the Agent in Charge showing the details of the shadow work engaged in by the Agents, and that such reports, or copies of them, were furnished to the United States District Attorney in the District in which the case was being tried, and copies were sent to the head of the Bureau of Investigation in the Department of Justice in Washington; and in denying the proffer of respondents to prove by said witness that such reports were made by the men employed in shadowing

jurors for the United States, that copies of the reports of such shadow men were sent to the District Attorney, and to the Bureau of Investigation at Washington, and that such was the practice and custom.

49. The court erred in sustaining the objection of the United States to the questions propounded to the
74 witness Speer relating to the shadowing of jurors of both petit and grand juries in the case of United States vs. Barrett et als., tried in the United States District Court for the Northern District of Pennsylvania in 1918 or 1919; and in denying the proffer of the respondents to prove by said witness the facts and circumstances connected with the shadowing of said jurors.

50. The court erred in sustaining the objection of the United States to the question propounded to the witness Bernard Kahn, as to whether, during the time he was employed in the Bureau of Investigation of the Department of Justice, did he know as a fact that it was the usage and custom of that Department to detail men to actually shadow jurors who had been selected and sworn in cases being prosecuted by the United States in which the jurors were not locked up, and that the shadowing continued during the time that the jurors were not actually in court, and in denying the proffer of respondents to prove by said witness that he did know that was the usage and custom.

51. The court erred in sustaining the objection of the United States to the question propounded to the witness Bernard Kahn in respect to the shadowing of jurors in the case of United States vs. Harrison, which was tried in the United States District Court sitting in Columbus, Ohio, in 1922, or 1923; and in denying the proffer of respondents to prove by said witness the facts and circumstances relating to the shadowing of the jury in said case.

52. The court erred in sustaining the objection of the United States to the question propounded to the witness Bernard Kahn respecting the shadowing of jurors in the case prosecuted by the United States which was tried in the United States District Court sitting at Minot,
75 North Dakota, in 1923, and in denying the proffer of the respondents to prove by said witness the facts and circumstances relating to the shadowing of the jury in said case.

53. The court erred in denying the proffer made by the respondents to prove by said witness the facts and circumstances relating to the shadowing of jurors in cases tried in the United States District Courts sitting in Chicago, Illinois, and in Oklahoma City, Oklahoma.

54. The court erred in sustaining the objection of the United States to the question propounded to the witness Albert G. Adams as to whether, during the time he was employed in the Department of Justice as an investigator, and also as Assistant Chief of Division, did he know as a fact that it was the usage and custom of the United States to shadow jurors in cases being prosecuted by the United States, and that such shadowing was done by the Special Agents of the Department of Justice, and the jurors were shadowed during the time they were away from the courtroom, beginning in the morning when they left their homes, taking them to court, and after the adjournment of court, continuing to shadow them until they had retired to their homes in the evening; and in denying the proffer of the respondents to prove by said witness that he did know of such usage and custom, and that that was the usage and custom of the Department of Justice.

55. The court erred in sustaining the objection of the United States to the question propounded to the witness James W. Kemp as to whether during the time he was engaged in the Department of Justice as a special agent in the Bureau of Investigation did he know as a fact that it was the usage and custom of the United States in cases being prosecuted by the United States in various parts of the country to assign agents of the Bureau of In-
76 vestigation who would and did shadow jurors in cases where the jurors were not locked up, and that the shadowing covered the period when the jurors were not actually sitting in the courtroom; and in denying the proffer made by the respondents to prove by said witness that such was the custom and usage.

56. The court erred in sustaining the objection of the United States to the question propounded to the witness Joseph F. Kroppy as to whether during the time he was in the Department of Justice did he know as a fact that it was the usage and custom in cases being prosecuted by

the United States that the agents of the Bureau of Investigation would be assigned to and did actually shadow jurors in cases where the jurors were not locked up and that the shadowing was continued during the morning until the jurors went to court, and then resumed in the afternoon after the adjournment of court, continuing until the jurors retired to their homes at night, and in denying the proffer made by respondents to prove by said witness that he did know of such usage and custom, and that such was the usage and custom.

57. The court erred in denying the proffer of the respondents to prove by the witness J. Gordon Shuey facts relating to the shadowing of jurors in the case of United States vs. Connell, and others, which was tried in the United States District Court sitting in Philadelphia in the spring of 1924; and in the case of United States vs. Guggenheim, and others, which was tried in the United States District Court for the Western District of Pennsylvania, in 1924; and in denying the proffer of the respondents to prove the facts and circumstances relating to the shadowing of jurors in said cases.

77 58. The court erred in sustaining the objection of the United States to the question propounded to the witness W. Sherman Burns as to whether Henry Mason Day did state to him whether or not he (Day) thought that some of the jurors were already being shadowed; and in denying the proffer of the respondents to prove by said witness that if permitted to answer he would say, "Yes."

59. The court erred in sustaining the objection of the United States to the question propounded to the respondent Henry Mason Day, as a witness, as to whether he was not followed by unidentified people that he did not know; and in denying the proffer of the respondents to prove by said respondent as a witness that he was continually followed on the streets, about clubs, and in going to and from his home, by men whom he did not know by name, and that he would be followed first by one man and then by another, which following continued for days, and that this occurred innumeraible times, and that he reported it to Mr. Sinclair, and that he observed on numerous occasions, continually when he was abroad with Mr. Sinclair, that Mr. Sinclair

and himself were both followed continually in New York, in Washington and other cities, about hotels, clubs, in business places and about their homes.

60. The court erred in sustaining the objection of the United States to the question propounded to the respondent Henry Mason Day as to whether on October 18, 1927, did he know whether or not it was the custom of the United States District Attorney in the City of New York to shadow through representatives of the Department of Justice jurors engaged in the trial of criminal cases in the United States courts in that city; and in denying the proffer of the respondents to prove by said witness that he did know of it.

78 61. The court erred in sustaining the objection of the United States to the question propounded to the respondent Henry Mason Day as to whether at that time it was not a matter of public, common knowledge in the City of New York that the custom of the United States District Attorney in the trial of criminal cases in the United States courts in the City of New York was to shadow jurors after they were empaneled and sworn and during the trial; and in denying the proffer of the respondents to prove by said witness that it was a matter of common and general knowledge, and that he had been in New York just prior to coming to Washington in October, 1927.

62. The court erred in sustaining the objection of the United States to the question propounded to the respondent Henry Mason Day as to whether he did or did not know of instances in New York, through public discussion, in which jurors had been followed while serving in the United States courts by representatives of the Government and the Department of Justice; and in denying the proffer of the respondents to prove by said witness that he did know of such instances.

63. The court erred in sustaining the objection of the United States to the question propounded to the witness Frank J. O'Reilly, and the motion of the United States to strike out the answer of said witness, in respect to what inquiry he made of Mrs. Kidwell when he went to the house No. 1637 You Street.

64. The court erred in sustaining the objection of the United States to the question propounded to the witness

Frank J. O'Reilly as to whether he asked Mrs. Kidwell for or anything about Juror Kidwell, and in striking out the answer of the witness that he did not.

79 65. The court erred in sustaining the objection of the United States to the question propounded to the witness Frank J. O'Reilly as to why he did go from No. 1637 You Street to the Barber Shop at the Myrtle Hotel.

66. The court erred in sustaining the objection of the United States to the question propounded to the witness Frank J. O'Reilly as to whether, when he went to the shop of Barber Kidwell, did he ask Barber Kidwell any question concerning any one.

67. The court erred in sustaining the objection of the United States to the question propounded to the witness Frank J. O'Reilly as to whether Juror Kidwell's name was called or mentioned in the conversation the witness had with Barber Kidwell.

68. The court erred in sustaining the objection of the United States to the question propounded to the witness Frank J. O'Reilly as to whether it was true that on the occasion that he saw Barber Kidwell not one word was said about or concerning in any way Juror Kidwell.

69. The court erred in overruling the objections of respondents to the questions propounded to the witness Edward J. Kidwell, Jr., as to the occasion when he sat on the bench in the Museum Grounds; and in denying the motion of the respondents to strike out the testimony of said witness with respect to this incident, on the ground that there was no evidence to show that the man who spoke to the witness Kidwell was in any way identified with the respondents or the William J. Burns International Detective Agency.

70. The court erred in overruling the objection of the respondents to the questions propounded to the witness Edward J. Kidwell, Jr., as to what transpired be-

80 tween said witness and some unidentified person at the west door of the courthouse, and why the said witness came back into court, on the ground that there was no evidence to show that the person who spoke to the witness Kidwell was in anywise identified with the respondents, nor was it any one for whose conduct the respondents

were responsible; and in denying the motion of the respondent to strike out the testimony of the witness respecting this incident.

71. The court erred in overruling the objection of the respondents to the question propounded to the witness Edward J. Kidwell, Jr., as to whether on the occasion when he was in Horan's Place with Donald King and J. Ray Akers he did take any intoxicating liquor, on the ground that it was immaterial and irrelevant.

72. The court erred in overruling the objection of the respondents to the question propounded to the witness Edward J. Kidwell, Jr., as to whether he did recall an occasion when he was serving as a petit juror when there was a talk among the jurors on the subject of being watched or being shadowed; and in denying the motion of the respondents to strike out the answer of the witness.

73. The court erred in overruling the objection of the respondents to the question propounded to the witness Edward J. Kidwell, Jr., as to his recollection concerning what jurors were present on the occasion referred to in the preceding Assignment of Error.

74. The court erred in overruling the objection of the respondent to the question propounded to the witness Edward J. Kidwell, Jr., as to whether jurors Herzog, Holmes, and Kern participated in that talk.

75. The court erred in overruling the objection of respondents to the question propounded to the witness
81 Edward J. Kidwell, Jr., as to whether during the time that talk was going on other members of the jury panel came into that consultation room.

76. The court erred in overruling the objection of respondents to the question propounded to the witness Edward J. Kidwell, Jr., as to whether during the time he was serving as a petit juror in the Sinclair-Fall Criminal Case he did report or talk to his mother or father about those various incidents that he described on the witness stand, about the man approaching him at the west end of the courthouse, the Museum Grounds incident, and the fact about the man having been to the house and to the Barber Shop.

77. The court erred in overruling the objections of the respondents to the questions propounded to the witness

Edward J. Kidwell, Jr., as to what conversation he had with his mother and father respecting said incidents.

78. The court erred in overruling the objection of the respondents to the question propounded to the witness Edward J. Kidwell, Jr., as to whether he and his mother talked on the subject of the men having been at their home at the time the witness was serving as a petit juror.

79. The court erred in overruling the objection of the respondent to the question propounded to the witness Edward J. Kidwell, Jr., as to whether he discussed the same subject with his father.

80. The court erred in overruling the objection of the respondents to the question propounded to the witness Mrs. Mary Pearl Kidwell, as to whether she did tell her son of the occasion about the man coming to the house.

81. The court erred in overruling the objection of the respondents to the question propounded to the witness Mrs. Mary Pearl Kidwell as to whether she did tell her
82 husband in the presence of her son, Eddie, about the fact of the man having come to the house.

82. The court erred in overruling the objection of the respondents to the question propounded to the witness Bernice K. Heaton as to the conversation with Juror Kidwell.

83. The court erred in overruling the objection of the respondents to the question propounded the witness Bernice K. Heaton, as to whether she was present during the time that the trial was in progress, in the conference-room of the jurors, when the subject of being watched or shadowed or followed was mentioned or discussed.

84. The court erred in overruling the objection of the respondents to the question propounded to the witness J. Ray Akers as to when he saw Edward J. Kidwell, Jr., between October 18 and November 2, 1927, and what transpired between said witness and said Edward J. Kidwell, Jr.

85. The court erred in sustaining the objection of the United States to the question propounded to the witness J. Ray Akers as to how did he get out of jail.

86. The court erred in overruling the objection of respondents to the question propounded to the witness William J. McMullin as to whether he inserted the false state-

ment in his report at his own instance or at the instance of somebody else, and to the question as to whether the false statements were inserted in the report at the instance of Charles G. Ruddy.

87. The court erred in overruling the objection of respondents to questions propounded to the witness William J. McMullin as to the conversations he had with Charles G. Ruddy, on the ground that such conversations were irrelevant and immaterial and not admissible against the respondents.

88. The court erred in overruling the objection of
83 respondents to the questions propounded to the witness William J. McMullin as to a conversation he had with Charles G. Ruddy on November 2, 1927, after the discharge of the jury in the trial of the Sinclair-Fall Case, on the ground that such conversations were irrelevant and immaterial and not admissible against the respondents.

89. The court erred in overruling the objection of the respondents to the admission in evidence of the indictment in the case of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, being Exhibit No. 351, on the ground that the said indictment was immaterial and irrelevant.

90. The court erred [illegible]overruling the objection of the respondents to the offe[illegible]ng in evidence of docket entries showing the arraignments and pleas of the defendants in said criminal case.

91. The court erred in denying the proffer of the respondents, made after the court had announced its finding of guilty of contempt, to prove the custom, practice and usage of the Department of Justice of the United States with respect to the shadowing of jurors, to be received by the court in mitigation of the punishment to be inflicted by the court after its finding of guilty of contempt.

The foregoing constitute the errors relied upon by the respondent Harry F. Sinclair on the appeal in this cause.

MARTIN W. LITTLETON,
GEO. P. HOOVER,
Attorneys for Respondent Harry F. Sinclair.

Service of a copy of the foregoing Assignments of Error acknowledged this 12th day of July, 1928.

JOHN W. FIHELLY,
Assist. United States Attorney.

84 *Assignment of Errors.*

Filed July 12, 1928.

* * * * * * *

The respondent, William J. Burns, having appealed to the Court of Appeals of the District of Columbia from the final judgment entered in the above entitled cause, files this his assignment of errors and says that in the trial of said cause and in the rendering of the final judgment therein the trial court erred as follows:

1. In overruling the motion to dismiss the petition and discharge the rule made at the opening of the hearing.

2. In overruling the motion to dismiss the petition and discharge the rule made at the close of the Government's case.

3. In overruling the motion to dismiss the petition and discharge the rule made at the close of the entire case.

4. In holding that the evidence was sufficient to justify the conviction of William J. Burns of contempt of court.

5. In finding as a matter of law that William J. Burns was guilty of contempt of court.

6. In not holding as a matter of fact and law that William J. Burns was not guilty of any act or acts constituting contempt of court.

7. In holding that the shadowing or the keeping under surveillance the members of a jury in a criminal case per se constituted a contempt of court.

8. In holding that the acts done by William J. Burns in the Fall-Sinclair criminal case obstructed or tended to obstruct the due administration of justice so as to constitute contempt of court.

85 9. In not holding that the acts done by William J. Burns in the Fall-Sinclair criminal case neither obstructed nor tended to obstruct the due administration of justice so as to constitute contempt of court.

10. In refusing to admit in evidence testimony concerning the practice of the Department of Justice of the United States with respect to shadowing of juries in criminal cases during the trial thereof.

11. In admitting in evidence the original and carbon copies of the reports of the operatives of the Burns Agency.

12. In admitting evidence concerning the so-called King-Akers-Kidwell incident.

13. In admitting evidence concerning the alleged falsity, incorrectness, or inaccuracies of the reports of the operatives of the Burns Agency.

14. In admitting in evidence testimony relating to things said and done by, and the conduct of, William J. Burns after the discharge of the jury as constituting acts of contempt of court.

15. In refusing to admit evidence that immediately subsequent to the dismissal of the jury in the Fall-Sinclair criminal case all the jurors therein had stated one to the other and agreed among themselves that at no time during the said trial were they conscious of being shadowed or followed.

16. In admitting evidence concerning the suspicion of Juror Herzog that during the Fall-Sinclair criminal case he was on one occasion followed by some one; and the testimony of Juror Bailey to the effect that on one occasion on October 28, 1927, during the Fall-Sinclair criminal case she was observed by some unknown person.

between October 18 and November 2, 1927, and what tran-

17. In admitting testimony of a conversation in the petit jury room between jurors Heaton, Bailey and Kidwell during the Fall-Sinclair criminal case.

18. In refusing to admit testimony on cross-examination J. Ray Akers as to when he saw Edward J. Kidwell, Jr., of Frank J. O'Reilly, one of the operatives, of what was actually said between O'Reilly and the father and mother of Juror Kidwell on the occasion of the visit of O'Reilly to the barbershop of the elder Kidwell and to the home of the mother.

19. In admitting the testimony of Juror Kidwell concerning an incident in the Museum Grounds and an incident at the west end of the Court House, both alleged to have taken place during the Fall-Sinclair criminal case.

20. In refusing to grant the motion to strike out the testimony of Britten Browne, Robert Dove, Mrs. Rowzee, Carl S. Anderson and Donald Woodward, concerning an investigation of the property of Juror Kern.

21. In refusing to grant the motion to strike out the O'Reilly report of October 28, 1927 (Government's Exhibit 170) concerning Juror Kern.

86 22. In admitting in evidence the alleged false affidavit of William J. McMullin and the affidavit of Frank J. O'Reilly.

23. In admitting and refusing to strike out the evidence of William J. McMullin to the effect that Charles G. Ruddy had told him, McMullin, that the alleged false affidavits of McMullin and O'Reilly had been made under the instructions of William J. Burns.

24. In sustaining objections to questions in the cross-examination of W. J. McMullin, seeking to elicit the fact that McMullin had visited the Government's counsel in the Fall-Sinclair case before he, McMullin, made the alleged false affidavit and was directed by the Government's counsel to make such affidavit.

25. In refusing to admit testimony concerning the details of the making of the McMullin affidavit.

26. In refusing to admit testimony concerning the several applications of W. J. McMullin for work with the Burns Agency, and concerning his prior life, his conviction of crime and commission of various offenses, including his desertion from the army, all to discredit him as a witness.

27. In admitting the testimony of W. J. McMullin concerning who had directed him to put false statements in his reports of October 19, 20 and 21, 1927.

28. In admitting testimony of W. J. McMullin concerning the alleged conversations between himself and C. G. Ruddy.

29. In refusing to comply with the formal application to the trial justice that he observe McMullin's applications to the Burns Agency in 1925 and 1927 in respect to various words to test McMullin's credibility in saying he did not write the application of 1925.

30. In refusing to admit the record of William J. McMullin in the War Department for the purpose of discrediting him as a witness.

31. In refusing to admit in evidence W. J. McMullin's application for employment to the Burns Agency in 1925.

32. In refusing to admit in evidence W. J. McMullin's application for employment to the Burns Agency in 1927.

33. In refusing to admit in evidence the certificate of parole of W. J. McMullin from the Ohio State Penitentiary.

34. In refusing to admit in evidence A. Lincoln Till's recommendation of the real William V. Long to the Burns Agency.

35. In refusing to admit in evidence the testimony of S. M. Current, William V. Long, Harry F. Stahl, Thomas E. Lodge and Charles G. Ruddy for the purpose of contradicting and discrediting William J. McMullin.

CHAS. A. DOUGLAS,
JO V. MORGAN,
Attorneys for Defendant.

Service of a copy of the foregoing Assignment of Errors acknowledged this 12th day of July, 1928.

JOHN W. FIHELLY,
Asst. United States Attorney.

87 *Assignment of Errors.*

Filed July 12, 1928.

* * * * * * *

The respondent W. Sherman Burns having appealed to the Court of Appeals of the District of Columbia from the final judgment entered in the above-entitled cause, files this his assignment of errors and says that in the trial of said cause and in the rendering of the final judgment therein the trial court erred as follows:

1. In overruling the motion to dismiss the petition and discharge the rule made at the opening of the hearing.

2. In overruling the motion to dismiss the petition and discharge the rule made at the close of the Government's case.

3. In overruling the motion to dismiss the petition and discharge the rule made at the close of the entire case.

4. In the finding of fact that W. Sherman Burns was guilty of contempt of court.

5. In finding as a matter of law that W. Sherman Burns was guilty of contempt of court.

6. In not holding as a matter of fact and law that W. Sherman Burns was not guilty of any act or acts constituting contempt of court.

7. In holding that the shadowing or the keeping under surveillance the members of a jury in a criminal case *per se* constituted a contempt of court.

8. In holding that the acts done by W. Sherman Burns in the Fall-Sinclair criminal case obstructed or tended to obstruct the due administration of justice so as to constitute contempt of court.

88 9. In not holding that the acts done by W. Sherman Burns in the Fall-Sinclair criminal case neither obstructed nor tended to obstruct the due administration of justice so as to constitute contempt of court.

10. In refusing to admit in evidence testimony concerning the practice of the Department of Justice of the United States with respect to the shadowing of juries in criminal cases during the trial thereof.

11. In refusing to admit testimony tending to prove that W. Sherman Burns had knowledge of the practice of the Department of Justice of the United States of shadowing juries in criminal cases before he accepted the employment by Mr. H. M. Day for the Burns Agency.

12. In refusing to admit testimony that W. Sherman Burns did not, when he sent C. G. Ruddy to the respondent, H. M. Day, intend to turn the Burns Agency over to Day for Day to do with it as he pleased.

13. In admitting in evidence the original and carbon copies of the reports of the operatives of the Burns Agency.

14. In admitting evidence concerning the so-called King-Akers-Kidwell incident.

15. In admitting evidence concerning the alleged falsity, incorrectness, or inaccuracies of the reports of the operatives of the Burns Agency.

16. In admitting in evidence testimony relating to things said and done by, and the conduct of W. Sherman Burns after the discharge of the jury as constituting acts of contempt of court.

17. In refusing to admit evidence that immediately subsequent to the dismissal of the jury in the Fall-Sinclair criminal case all the jurors therein had stated one to the other and agreed among themselves that at no time during the said trial were they conscious of being shadowed or followed.

18. In admitting evidence concerning the suspicion of Juror Herzog that during the Fall-Sinclair criminal case he was on one occasion followed by some one; and the testimony of Juror Bailey to the effect that on one occasion on October 28, 1927, during the Fall-Sinclair criminal case she was observed by some unknown person.

19. In admitting testimony of a conversation in the petit jury room between Jurors Heaton, Bailey and Kidwell during the Fall-Sinclair criminal case.

20. In refusing to admit testimony on cross-examination of Frank J. O'Reilly, one of the operatives, of what was actually said between O'Reilly and the father and mother of Juror Kidwell on the occasion of the visit of O'Reilly to the barber shop of the elder Kidwell and to the home of the mother.

21. In admitting the testimony of Juror Kidwell concerning an incident in the Museum Grounds and an inci-
89 dent at the west end of the Court House, both alleged to have taken place during the Fall-Sinclair criminal case.

22. In refusing to grant the motion to strike out the testimony of Britten Browne, Robert Dove, Mrs. Rowzee, Carl S. Anderson and Donald Woodward concerning an investigation of the property of Juror Kern.

23. In refusing to grant the motion to strike out the O'Reilly report of October 28, 1927 (Government's Exhibit 170) concerning Juror Kern.

24. In admitting in evidence the alleged false affidavit of William J. McMullin and the affidavit of Frank J. O'Reilly.

25. In sustaining objections to questions in the cross-examination of W. J. McMullin seeking to elicit the fact that McMullin had visited the Government's counsel in the Fall-Sinclair case before he, McMullin, made the alleged false affidavit and was directed by the Government's counsel to make such affidavit.

26. In refusing to admit testimony concerning the details of the making of the McMullin affidavit.

27. In refusing to admit testimony concerning the several applications of W. J. McMullin for work with the Burns Agency, and concerning his prior life, his convictions of crime and his commission of various offenses, including

his desertion from the army, all to discredit him as a witness.

28. In admitting the testimony of W. J. McMullin concerning who had directed him to put false statements in his reports of October 19, 20 and 21, 1927.

29. In admitting testimony of W. J. McMullin concerning the alleged conversations between himself and C. G. Ruddy.

30. In refusing to comply with the formal application to the trial justice that he observe W. J. McMullin's applications to the Burns Agency in 1925 and 1927 in respect to various words, to test McMullin's credibility in saying he did not write the application of 1925.

31. In refusing to admit the record of William J. McMullin in the War Department for the purpose of discrediting him as a witness.

32. In refusing to admit in evidence W. J. McMullin's application for employment to the Burns Agency in 1925.

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35. In refusing to admit in evidence A. Lincoln Till's recommendation of the real William V. Long to the Burns Agency.

90 36. In refusing to admit in evidence the testimony of S. M. Current, William V. Long, Harry F. Stahl, Thomas E. Lodge and Charles G. Ruddy for the purpose of contradicting and discrediting W. J. McMullin.

CHAS. A. DOUGLAS,
JO. V. MORGAN,
Attorneys for Respondent.

Service of a copy of the foregoing Assignment of Errors acknowledged this 12th day of July, 1928.

JOHN W. FIHELLY,
Assist. United States Attorney.

91 *Supplemental and Additional Designation of Record.*

Filed July 13, 1928.

* * * * * * *

The respondents file this their supplemental and additional designation of record and direct the clerk to include in the record on appeal to the Court of Appeals, in addition to that heretofore designated, the following:

June 8, 1928.—Assignment of errors of Henry Mason Day.

June 9, 1928.—Memo. time to file amendments to proposed bill of exceptions extended for fifteen days from June 9, 1928.

June 27, 1928.—Memo. time to file amendment to proposed bil lof exceptions extended for fifteen days from June 27, 1928.

July 11, 1928.—Memo. motion and order for extention of time for submitting bill of exceptions to July 28, 1928, granted and filed.

July 12, 1928.—Assignment of errors of Harry F. Sinclair.

July 12, 1928.—Assignment of errors of William J. Burns.

July 12, 1928.—Assignment of errors of W. Sherman Burns.

July 13, 1928.—This supplemental and additional designation of record.

GEORGE P. HOOVER.
MARTIN W. LITTLETON.
CHAS. A. DOUGLAS.
JO. V. MORGAN.
DANIEL THEW WRIGHT.

Service of copy of foregoing accepted this 13th day of July, 1928.

NEIL BURKINSHAW,
Asst. United States Attorney.

92 Supreme Court of the District of Columbia.

Tuesday, July 17", A. D. 1928.

The Court resumes its session pursuant to adjournment, Mr. Justice Bailey, presiding.

* * * * * * *

Siddons, J.

Now comes here the respondents by their attorneys Messrs. Martin W. Littleton, George P. Hoover, Daniel Thew Wright, Chas. A. Douglas and Jo. V. Morgan and pray the Court to sign, and make a part of the record their Bill of Exceptions taken during the trial of the case and filed with the Court on the 23rd day of May 1928, which is accordingly done.

Order Extending Time for Filing Transcript of Record.

Filed July 19, 1928.

* * * * * * *

On consideration of the Petitioners' motion to extend the time for filing the transcript of record in this Court in the above entitled cause until and including September 1, 1928, It is by the Court this day ordered that said petition be, and the same is hereby granted.

Per Mr. Justice ROBB,
Senior Associate Justice.

The Chief Justice did not participate in the consideration of this motion.

Test:
A true copy.
[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

93 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 92, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copies of which are made part of this transcript, in cause entitled Criminal Contempt No. 17, United States vs. Harry F. Sinclair, et al., as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 25th day of August, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

By CHAS. B. COFLIN,
Assistant Clerk.

94 Volume No. One.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal, Contempt, No. 17.

UNITED STATES

v.

HARRY F. SINCLAIR, WILLIAM J. BURNS, W. SHERMAN BURNS, HENRY MASON DAY, SHELDON CLARK, and CHARLES L. VIETSCH.

Bill of Exceptions.

95 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal, Contempt, No. 17.

UNITED STATES

v.

HARRY F. SINCLAIR, WILLIAM J. BURNS, W. SHERMAN BURNS, HENRY MASON DAY, SHELDON CLARK, and CHARLES L. VIETSCH,

Bill of Exceptions.

Be it remembered that at the trial of this cause commencing December 5, 1928, and terminating February 21, 1928, before the Honorable Frederick L. Siddons, Justice, holding Criminal Court Number Two, proceedings were had and rulings made by the court and exceptions taken and allowed on behalf of the respondents, as follows:

There appeared on behalf of the United States, Peyton Gordon, Neil Burkinshaw and James J. O'Leary, Esquires; on behalf of the respondent Harry F. Sinclair, there appeared George P. Hoover, Martin W. Littleton, G. T. Stanford, and R. W. Ragland, Esquires; on behalf of respondents William J. Burns and W. Sherman Burns and Charles L. Vietsch, there appeared Charles A. Douglas, Jo V. Morgan and Frederick C. Bryan, Esquires; on behalf of respondent Henry Mason Day, there appeared Daniel Thew Wright and John W. H. Crim, Esquires, and on behalf of respondent Sheldon Clark, there appeared Morgan H. Beach and E. C. Brandenburg, Esquires.

Before any evidence was adduced the respondents severally made motions to dismiss the petition and discharge the rule, which motions were overruled, at the conclusion
96 of the case, and exceptions duly noted. In the course of the argument of Peyton Gordon, Esquire, in opposition to the motion to dismiss and discharge, the following occurred:

Mr. Gordon: If your Honor please, the contempt under which these respondents are charged is the power conferred upon the Court for the inherent power the Court has to punish for contempt. Under Section 725 of the Revised

statutes of the United States, now Section 238 of the Federal Penal Code, it was argued by Judge Wright yesterday that these contempts were limited by the provisions of that section to contempts committed in the actual face of the Court or contempts committed as against its orders or by disobedience of its officers. He cited the Robinson case, 18 Wallace, which, I respectfully submit, notwithstanding the fact that it was a Supreme Court decision, has not been followed by the other federal courts and by the Supreme Court of the United States in its later authorities. But that the power to punish for contempt extends even to the doing of acts in its immediate presence or so near thereto as to obstruct the due administration of justice *ad* defined in other statutes.

I have in mind Section 135 of the Federal Penal Code. And an act which would violate Section 135 of the Federal Penal Code, while indictable under that section, if the Court sees fit, if it is committed in its presence or so near thereto as to obstruct the due administration of justice, that would be contempt of the court of which the Court would have the power and the jurisdiction to cite the persons so offending and hold them for contempt and punish them for contempt in a summary way.

97 Now Section 135 of the Federal Penal Code provides, and so far as the petition filed by the United States is concerned, I shall read the provisions of that section in full, and then I will delete it to show the portions that I claim are violated or constitute a contempt of this Court such as is charged in the petition:

"Whoever corruptly or by threat or force or by threatening letter or by communication shall endeavor to influence, intimidate or impede any witness in any court of the United States or before any United States commissioner or official acting as such commissioner, or any grand or petty jury, or officer in or of any court under United States, or officer who shall be serving at any examination or other proceeding before the United States commissioner or officer acting as such commissioner in the discharge of his duty, or who corruptly or by threat or force or by any threatening letter or communication shall influence, obstruct or impede or endeavor to influence, obstruct or impede the due

administration of justice, shall be fined not more than one thousand dollars and imprisoned not more than one year."

Now this language so far as was applicable to this proceeding is as follows:

"Whoever corruptly shall endeavor to influence or impede any witness or any grand or petty jury or officer in or of any court, or who corruptly shall influence, obstruct or impede or endeavor to influence, obstruct or impede the due administration of justice therein shall be fined" and so forth.

The petition sought to bring to the Court's attention the acts of these respondents as a contempt of Court, for
98 doing acts that the Government considered was a violation of the language of that section, and hence a contempt of court.

Whereupon **Charles G. Ruddy**, produced as a witness on behalf for the United States, being first duly sworn was examined and testified as follows:

I am Manager of the Philadelphia Office of the W. J. Burns International Detective Agency, a corporation. Raymond Burns is President and W. Sherman Burns is Secretary and Treasurer. I have been manager of Philadelphia office since May 7, 1927. I was with Burns Agency sometime before that. I was assigned to the duties of coming to Washington in connection with the surveillance of the jury in the case of United States v. Fall and Sinclair. About 5.10 P. M. on October 18, 1927, I was called on the long distance phone by Mr. Sherman Burns, who was in New York, and was instructed by him to proceed to Washington immediately and report to Mr. Day at 2118 Leroy Place and get my instructions from him. Mr. Burns told me it was a surveillance case and he would send me a number of operatives from New York and I should send or take with me as many operatives from Philadelphia as I could, and I should get in touch with Charles L. Vietsch, the manager of the Baltimore office, who had been instructed to supply men to work under my direction. I arrived in Washington about 10:20 P. M. October 18, and went to 2118 Leroy Place and met Mr. Day. After I had identified

myself as being from the Burns Detective Agency, Mr. Day handed me a list of the jurors in the Fall-Sinclair case, then on trial. This list was a brief history of each juror.

Thereupon the Government offered in evidence the following document having first identified it by the witness as being the list of jurors in the Fall-Sinclair case that was given to him by the respondent Day, and it was received in evidence and marked

99 "GOVERNMENT EXHIBIT 1."

Conrad J. Herzog, 36 N. Y. Ave., N. E. or 920 Bladensburg Road, N. E. age 45 Auto Manager (White) one of the four owners of the North East Motor Co., (Ford). Lutheran Organizations said to be Mason; married children several, one boy about 18. Conrad Herzog, well known among Washington people as "Connie" Herzog, is the son of the late Fritz Herzog who ran a saloon in Washington for a number of years, famous in days gone by for its "Crab Feasts" Saturday nights down by the Navy Yard. He has a brother Charlie who is the well known restauranter, running the place down in the Municipal Fish Market, 11th St. wharves. The juror was born in Washington, local education. He has been interested in the different forms of auto business. He has conducted the Ford Agency at 920 Bladensburg Road for about three years. Prior to that he was a salesman for Universal Motor Company, on M Street, he is of German descent. A hale fellow well met and well liked. Is easily termed a "Sporting Man." Has been called for jury service before. Considered by corporations as a good juror.

Flora, Robert C., 76 T Street, N. W., age 38, Sales Agent, American Ice Co. He is married, wife is named Maud, have no children and been at this address for the past three years. Formerly lived 7 Second Street, N. E., and 1108 7th Street, N. E. Was on 2nd Street for four years and 7th Street a short time. He has been employed with the American Ice Co. for past twelve years. He has a step daughter named Eugenie who is twenty years old. He is a mason and a communicant of the Advent Episcopal Church at 2nd and You Streets, N. W. His mother resides with them. His wife owns the residence property which

was rented until they moved in three years ago. He drives a Ford coupe furnished by the employer. His wife was married twice. This is his first call for jury duty and he is known to have expressed the regret that he was not called in the court where he would have three months' service instead of one. He is a man of very pronounced prejudiced views regarding religious matters and against capital. He is also a man described as "very bullheaded." He is a man who has proven very unsatisfactory in a credit way. Two physicians and a coal dealer were forced to use a collecting agency to adjust their accounts with him. The agency reported one account not collected, another five dollars collected on $75.00 balance N. G., and other only partly adjusted.

John P. White, Age 30, 1315 North Carolina Ave., N. E., salesman for Holmes Baking Co. Protestant, organizations none, married, one child. This juror was born in Washington, a family of bread bakers and bread wagon drivers, his father was a baker (C. Kerns and Sons) (German descent). This boy and his brother have driven bread wagons for Holmes & Sons since becoming of age. He was educated in local schools, grade but not high. He is quite a sport. Will go to the races whenever he can. Takes a drink and takes a chance on any kind of bet. No Government connections. My informant states that he does not think Kern ever served on a jury before.

100 Bradner W. Holmes, 203 P Street, N. W., age 34, Floor Manager at Woodward and Lothrop (White), Protestant. Organizations Mason, married, Children 1. We trace this juror as being in Washington for over twelve years. He came here from Virginia and worked twelve years at Lansburg and Bros., as clerk up to floor walker. Has been with Woodward and Lothrop for about a year. His wife still works at Lansburg and Bros. He is rated as a very fine man, quiet, conservative, and fair minded. No Government connections. No record of prior jury service.

John J. Costinett, 1442 Fairmont Street, N. W., age 61, Merchant Tailor. He has been married twice, first wife was was Florence E. (divorced), present wife Grace L. Has a married daughter Pearl V. Merring. His real name was Costagneto and he is of Italian descent. His sisters are Mary Reami, 1107 K Street, N. E., and Kate Hurley on

Geranium Street. His brothers are Henry J., who is deceased, Joseph Rocco of Hyatsville, Md., a world war veteran who is receiving a pension from the Government. His parents are deceased. No member of his family is in Government service. For many years he has conducted a tailor shop at 1212 New York Avenue N. W. Formerly lived at 213 T Street, N. W. for ten years. He was once a very active — in Masonic affairs when a younger man and is now said to be a life member of the Masonic order, Eastern Star and is a member of the Christian Science Church. His correct residence address is 1442 Fairmont Street, N. W.

Norman L. Glasscock, 1013 8th Street, N. W., age 47. Rec. Clerk Somerville Co. He is married and they have two children. Been residing at this address for several years. This address is an old frame shack, poor appearance, dirty general condition and in downtown rooming house district. Part of the house is occupied by others. He has been employed by the Thos. Somerville Co., 312 13th Street, N. W., wholesale plumbers supplies, as a receiving clerk at $40 weekly and has been with the firm for 15 or 18 years. He is said to be a big, fat, lazy chap who takes the easy side of life, loves to fish, does a lot of loose talking and cursing, and has no particular political or religious affiliations. He takes no pride in his personal appearance. He and his whole family go down in the country every Sunday in their old car and fish. The records show an old unpaid judgment standing since July 16, 1924, for $12 due the Washington Business Bureau.

Edward J. Kidwell, Jr., white, age 25, 1637 You Street, S. E., work for Knessi, leather goods, Protestant, organizations none. Single. This young man is the son of Edrans J. Kidwell who for 30 years has been employed (general labor) at St. Elizabeth's Insane Asylum. Juror has a brother who is a barber. Since becoming of age he has worked for Kneessi Bros., (Trunks and Leather Goods, 409 7th Street.) He was born in Anacostia, D. C. Educational local schools. As a boy he was pretty wild, drinking and running around with rather a tough crowd. He has quieted down a little now but is still "a sport."

101 Charles Holt, 1104 4½ Street, S. W., age 63, brick mason, married and has a stepson, been residing at this address past thirty-five years. His step son is

a painter named Jos. Spickle who also lives here. He owns realty in the Northeast section of the city but has been renting the above address all these years. He is a returned brick mason, was a member of the Union of that trade but retired from that some time ago. He attends no church and has no fraternal affiliations but carries heavy life insurance. He is rated as being a man of cheerful disposition, likes to mingle with and carry on with young folks.

He bears an excellent reputation in his neighborhood, and among all who know him. He is said to be square and honorable, very broad minded in his views. Source not sure but thinks has served on jury before. He is best described as an old workingman who is of a good natured disposition and holds no grudge against anybody.

Mrs. Annella L. Bailey, white, age 30, 2700 Conn. Ave., Clerk, Arthur Jordan Piano Co., G Street, N. W., Protestant. Organizations none. Married, yes; children, none. This woman has not been living with her husband for some five or six years and no one knows where he is at the present time. From all accounts he was no good and did not support her. When he left her she went to work as a clerk at the Second National Bank for about a year and then left to take a better position with the Arthur Jordan Piano Co. One of the officials of this firm states that Mrs. Bailey is a fine, efficient employe, and is well liked by the firm and employees. That she is Christian woman but not strictly so. No Government connection. She was born in Washington.

Bernice K. Heaton, #219—1228 Eye Street, N. W., age 32, Instructor C. & P. Telephone Co. (white), Protestant, organization, none; single. Mr. Griffin, Traffic Supt. of C. & P. Telephone states this girl came here from Pennsylvania about 7 years ago and applied for a position which was given her. Thinks her parents are dead. Has no relatives in Washington. That she is a very fine girl and one of the best employees. That she is broad minded and in his opinion would give any one a square deal.

Gardner P. Grenfell, age 26, 1916 H Street, N. W., cable splicer. He is unmarried, has lived here twenty-six years, his father owns the property. His father is Frederick, a veterinary surgeon, and his brothers are Fred A., William M., and Carroll. All of his brothers served in the late war. William is still a patient at Mt. Alto Hospital. Brother

Fred A., is employed in research branch of the government service, at Pearl River, N. Y. His mother is a Catholic, and his father is a Protestant, and he is a Catholic. His parents came here from England, he has no known politics or fraternal connections. He has been employed for twelve years by the Potomac Electric Power Co., is a cable splicer and drives a Ford roadster. He is reported as a man of good habits, character and reputation.

William H. Goucher, 1408 Franklin St., N. E., age 39, tire vulcanizer. He is married, has two sons, and has been living here for the past nine years. He and his wife
102 Mrs. Lettye F., are joint owners of the residence property. He was many years ago partner in the Chew-Goucher Tire Co., on 14th Street, and the G. & W. Tire Co., wherein he was associated with W. N. Wood. There is an old judgment of record for $20, due a physician since May 1924. He is now said to be part owner and operator of a tire vulcanizing shop on 14th Street. His children attend schools. He is a Methodist and a member of the Elks. He bears a good name among those who know him and is said to be easily swayed in his viewpoint and this is his third call for jury service in three years. He devotes all his attention to his business and is little occupied in politics or other matters.

There upon the witness continued as follows:

When Mr. Day handed me this paper he asked me how many men I had brought down, and I informed him that I would have at least eight men in the field by eight o'clock the next morning. Mr. Day told me that he wanted me to place each of the jurors under surveillance, and that the jurors were to be held as closely as possible outside of the court; that under no circumstances were any of our men to approach any juror; but he wanted to be particularly informed whether our men who were holding the jurors under surveillance found that the jurors were approached by anyone else; and to be careful to take the numbers of any automobiles other than the jurors' that the jurors might get into with anybody; and he emphasized that the men were to be careful and instructed that they were not to approach the jurors at any time or in any way. He told me what the case was but he did not tell me who he was representing,

and I did not know. I told Mr. Day that we would need at least fourteen or fifteen men altogether.

The Burns Detective Agency has an agency here and to the best of my knowledge has had one here for a good many years.

After talking to Mr. Day I checked in at Wardman Park Hotel. George H. Robbins, my assistant, came with me. About midnight I proceeded to Baltimore to confer with the manager of the Baltimore office, Mr. Charles L.
103 Vietsch. Mr. Vietsch met me upon my arrival. No others had come into Washington to report to me before I left for Baltimore. After I conferred with Mr. Vietsch he instructed Mr. Kirby and Mr. Homrighausen to come with me. I communicated from Baltimore with Mr. Sherman Burns in New York by long distance phone. I informed him of the conversation with Mr. Day, and told him what Mr. Day wanted us to do. We also talked about finances. Mr. Burns told me to be very very careful to see that the men were very careful, and instructed that they were not to embarrass the jurors in any way, not to permit them to know they were being shadowed, and if any man disobeyed the instructions he was to be immediately sent back to his respective office. Mr. Burns further stated that he had already instructed, along the same lines, the men that had left New York to report to me. Mr. Burns told me how much money each man had been given before he left the New York office. He also told me that he would make arrangements to send me money as I required it. Mr. Burns did this. Money was brought to me three different times by Mr. Vietsch, at my request. It was brought in cash in amounts of $500 each time. I got no money at all in this operation from the Washington Agency, nor did I confer with the Washington Agency.

By arrangement I met the first agents to arrive in Washington at 8:30 the next morning, October 19, at the Union Depot. Kirby and Homrighausen came from Baltimore; Dwyer, O'Neill, Brennan and Klein came from New York, and Stewart and a man supposed to be named Long, but whose name I have since learned is not Long, came from Philadelphia. I instructed them to check in at hotels, but I can't remember just which man went to which certain hotel. There was the Commodore, the Capital Park, the

Plaza, the National. At that time no one was assigned either to the Mayflower or to Wardman Park; but
104 the next day, October 20, Mr. O'Reilly was assigned to the Mayflower when he arrived from New York. To the best of my knowledge, O'Reilly has been with the Agency for some time.

At that first meeting with Mr. Day he told me that he wished daily reports made from each operative. We did that. I designated the jurors to the operatives by numbers that I obtained from the list given me by Mr. Day. As I understand it was the position they sat in in the jury box, and they counted from left to right. I was never in the court room. I had a newspaper photograph of the jurors. I told the operatives which of the jurors they were to follow. I did not show them the picture at that time. I got it later. It was not given me by Mr. Day. I instructed each one of the agents to come down to the court room to pick up his particular juror. When the jurors left the court room, the operatives were instructed to hold them under surveillance until they went home, and up to a reasonable hour at night. All the operatives reported to me each day. The original reports the operatives made to me were in their own handwriting. I made copies on the typewriter of the facts in each report, that is to say, edited reports, the original of which were given to Mr. Day and I kept the carbons. The original reports were all held until October 29th, and I then sent them to Mr. W. Sherman Burns in New York. Some of these reports were made to Mr. Day at his residence, 2118 LeRoy Place, but generally they were handed to him in my apartment at Wardman Park. There was no stated time for the making of these reports. After we got organized they were generally made between eleven and one o'clock the morning of the next day.

I met Mr. Sheldon Clark while I was here in Washington. I do not remember the date of the first meeting, but Mr. Day introduced us in my apartment. Mr. Robbins was un-
doubtedly there, but I think no one else was. To the
105 best of my recollection, Mr. Clark came to my apartment two or three times at the most. One day he called alone to get the reports. The other times that Mr. Clark was there with Mr. Day, I delivered the reports to Mr. Day.

Arthur J. Sullivan was one of my agents here in this operation. Each agent is known by a number. Sullivan's number is S-70, Klein's number is K-27, Stewart's number is S-71, O'Neil's number is 0-3, Long, who afterwards developed to be McMullin, is L-36, Kirby is K-1, Homrighausen is H-4, Knowles is K-37, Dwyer is D-19, Merritt is M-30, Robbins is X-12, O'Reilly is 0-14, Brennan is B-4, Steer is S-81. I used my initials, C. G. R. I cannot tell from memory to which of the jurors I assigned each one of the operatives.

I ordered M-30 to purchase a camera for this business. He bought it for the purpose of taking a picture of one of the jurors that we believed was being tampered with by someone. We never used the camera. I wanted a picture of such person with the juror or both of them.

I kept all of the operatives on the job until Monday, the 24th. I retained Merritt, Steer, Long, O'Reilly and Robbins after that. Mr. Day instructed me to discontinue the services of all but five. He said he thought it was unnecessary to keep all the men here, as he could manage to get along with five or six, including myself. That is all he said. From the reports that I had already rendered Mr. Day decided which of the jurors he wished to continue to hold under surveillance. I assigned operatives to shadowing persons other than jurors. I assigned one man to follow Burr. I also detailed a man to shadow Kern's brother, and to the best of my recollection I assigned only one man.

Thereupon the following occurred:

Q. Did you assign anyone to investigate the rela-
106 tive of any other juror?

Mr. Wright: Just a moment. May it please your Honor, we object to the question unless there is some enlargement of the witness' testimony as to the instructions given by Mr. Day. If it was done not under any authorization from Mr. Day, we object to it.

Thereupon the objection was overruled by the Court and an exception duly noted, and the witness continued as follows:

I assigned O'Reilly to investigate juror Kidwell's brother. O'Reilly made a report of his investigation and I gave that report to Mr. Day. There was no investigation of any of the neighbors of any of the jurors. A report was made as to a man named Vogt, a neighbor of Kern, and communicated to Mr. Day. My instructions were for the men to take the numbers of any automobiles that might be seen with the subject. When we received these numbers of automobiles we had them looked up at the Registration Bureau. In this case an automobile appeared in the man's report, and another investigator was sent to find out who it belonged to, and it was found to belong to a man named Vogt, whose address was not that of a neighbor of the juror. In some neighborhood gossip the facts that are in the report regarding Mr. Vogt were brought out. That was all that was done in the matter, and it was not used for any other purpose.

Thereupon the following occurred:

Q. Did you cause anyone to investigate the mortgages or trusts on the home of Mr. Kern, the juror?

Mr. Wright: The same objection, your Honor.

On the ground that it was utterly and entirely without the instructions which the evidence tends to prove, and there is no theory in law or right or reason why Mr. Day or any of these other respondents should be held to
107 answer any such thing, for there is no suspicion yet that they authorized it.

Thereupon the objection was overruled by the Court, and an exception was duly noted, and the witness continued as follows:

I was asked by Mr. Day, around the 26th, the best way to find out how responsible juror Kern was as he believed him irresponsible. I told Mr. Day the best way was to make a general credit check on the man. We do it constantly. I said to see whether he owned his own home and whether he met his obligations, and Mr. Day said that he was particularly anxious that we should find out if there were any encumbrances on the property, and if any of them had been recently paid off. I instructed O'Reilly to find

out whether Mr. Kern owned his own property, and to make a general credit report on him. O'Reilly reported back in writing that Mr. Kern and his wife owned their own home jointly and that no encumbrance had been recently paid off. He did not learn whether there were any encumbrances on the home. This report was rendered in writing by the operative, but never reduced to a typewritten report to be handed to Mr. Day and I never reported it to him personally.

I had Kirby observe juror Holt. Kirby provided a room for himself opposite Holt's house. I did not do it. I put it in his expense account. The neighborhood in which Holt lived was such that when the policeman on the beat saw Kirby there he advised him to keep away, as it was a neighborhood where strangers were looked upon with some suspicion. Kirby took the room. To keep a proper surveillance and to keep from being interfered with by others who might misunderstand his purpose in the neighborhood, I sanctioned it after he had taken the room. He still continued to hold his hotel room. He held the room for two days, Saturday and Sunday of the first week of the trial. That surveillance discontinued when the room was given up, which was at the same time a number of other
108 surveillances were discontinued. From the reports I had been giving Mr. Day, he said it was no longer necessary to shadow a number of jurors, among whom was Holt. Holt's name was not mentioned particularly. We could do with less men. We went back, with some of the men that were left behind, to other jurors from time to time. There were certain jurors that were not shadowed after some of the men went home as we did not have enough men to shadow all of them. I do not know why certain persons were shadowed and others not. Mr. Day instructed me as to which persons to shadow.

I sent weekly reports to Mr. Sherman Burns regarding the men's expenses. I wrote Mr. Sherman Burns a letter on October 26th.

The Government thereupon offered in evidence the following letter of October 26, 1927, from Charles G. Ruddy to W. Sherman Burns, and it was received in evidence and marked "Government Exhibit No. 2."

"Washington, D. C., Oct. 26th, 1927.

"Mr. W. Sherman Burns,
New York Office.

DEAR MR. BURNS:

Please find enclosed time and expenses for the four men who discontinued. I think it is self explanatory.

The reason that these men returned was because the client decided that only certain members need watching from now on.

At the present time there are six working including myself. Brief reports have to be typewritten and submitted to the client daily, also someone has to be in the hotel all the time in case of emergency calls. Asst. Manager G. H. Robbins is doing this detail work under clients O. K.

It's been a tough time up to now mainly due to the fact that all interested parties are under an abnormal mental strain and I have had quite a job trying to get them to keep their feet on the ground, however up to now I have succeeded in doing so.

109 Will *you* keep you advised from time to time just how things are progressing.

With best personal regards,
Yours very truly,

C. G. RUDDY."

Thereupon the witness continued as follows:

The "interested parties" referred to in the letter are Mr. Day and Mr. Clark and everybody working in the case, the men and myself, but principally I referred to Mr. Day and Mr. Clark.

Thereupon, witness was referred to a book of carbon copies, relating to the surveillance of the jury in the Fall-Sinclair case and designated as the "History of New York Operation #5023" by which designation the surveillance was known. Witness was shown pages 212 to 220, which he identified as copies of reports of operatives S-81 (Steer) from October 21 to 28. These reports were transcribed from the original reports made by operatives in their own handwriting; and edited by witness and sent to Day.

Thereupon the Government introduced in evidence the following and marked

"GOVERNMENT'S EXHIBIT No. 10."

"*Special Report.*

Washington, D. C., Friday, October 21st, 1927.

"New York Investigator S-81.

Acting under instructions from Principal, W. S. B., at 10:00 A. M. I arranged to proceed to Washington, D. C.

Boarding the 3:25 P. M. train and arriving at 8:50 P. M.

Checked in Penna. Hotel and awaited instructions, discontinuing at 11:00 P. M.

Expenses $17.70.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 9."

"*Special Report.*

Washington, D. C., Saturday, October 22nd, 1927.

"N. Y. Investigator S-81.

110 Pursuant to instructions from Manager C. G. R., I waited at my hotel at 7:00 A. M. for orders.

At 10:15 A. M., I was told to proceed to Holmes Bakery at #107 F Street and meet N. Y. Investigators M-20 and D-9 and try and obtain designation on brother of Juror #1—Kern.

At 11:00 A. M., a man driving a Lincoln Touring #Q-7877, was thought to be the man, but we later found out different.

At 8:30 A. M., man thought to be Juror #1 drove off in a Chev. license given in D-9's report, which we followed to 13th & North Carolina Aves., as this was not the man, we returned to subject's home and saw subject, an old man and two other men arrive in a Hudson, entering about 9:10 P. M.

At 10:00 P. M., these people without subject drove off.

At 11:00 P. M., I was instructed to report for orders, which I received and returned to my hotel discontinuing at 1:45 A. M.

Expenses $7.87.
Time 1½-day."

"GOVERNMENT'S EXHIBIT No. 8."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.
New York Investigator S-81 Reports:

Continuing on above operation, I awaited instructions at my hotel at 9:00 A. M.

At 10:30 A. M., I was instructed to investigate license #N-5259, Essex, owned by a Mrs. J. E. Vogts at 1411 North Carolina Ave. N. E.

Learned Mrs. Vogts lives with her husband and they have an eight year old boy. They do not live at 1411 N. C. Ave., any more but are at 1317 N. C. Ave., N. E., which is right next door to the Foreman of the Jury. (Kern—1315 N. C. Ave., N. E.).

Mr. Vogts is Freight Agent for B. & O. R. R., and B. & P. R. R. during the day. At night he is in the employ of U. S. Government doing accounting work.

Vogts sold house formerly lived in for $7,750 about six months ago, having lived there for seven or eight years. Is thought to be well fixed as to money.

It is understood that during the Flu Epidemic, by virtue of his position as Freight Agent for the two railroads, Vogts made about 1,000 in four days granting favors relative to the shipping of bodies.

I then went to Vogts' home in an effort to get designation in case he should have to be followed but did not see him. Discontinued at 9:40 P. M.

Expenses $8.00.
Time 1 day."

111 "GOVERNMENT'S EXHIBIT No. 7."

"Washington, D. C., Monday, October 24th, 1927.

"New York Operating #5023.
New York Investigator S-81 Reports:

Acting under instructions of Manager C. G. R., I proceeded to conduct an investigation—at 10:00 A. M.—on Mr. H. R. Lamb, owner of Oakland Roadster, license #P-1738, whose address was given as 1135 16th St., N. W.

Subject is Special Assistant of District Attorney, in the Department of Justice at 1001 Vermont Avenue.

I did not see the subject's car parked near the Department of Justice, so proceeded to the home address, which is the Racquet Club.

Not seeing subject or his car I discontinued at 11:30 P. M.

Expenses $7.97.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 6."

"Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.
New York Investigator S-81 Reports:

Acting under instructions from Manager C. G. R., I awaited orders from 8:00 A. M., at my hotel.

Was instructed to check out of Pennsylvania Hotel and check in the Wardman Park at 3:00 P. M.

At 8:30 P. M., I was instructed to proceed to the vicinity of 1749 18th Street, N. W., which is a 3-story red brick house. Upon arrival I noticed subject's car, license P-993, a Chevrolet, standing in front. There were lights on the first floor of the house.

Between 9:00 P. M., and 11:35 P. M., the only person entering or leaving was an elderly lady.

At 11:35 P. M., subject drove off, returning in ten minutes on foot.

At 12:05 A. M., all lights in the house were put out. I remained till 3:00 A. M., when I discontinued.

Expenses $12.30.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 5."

"Washington, D. C., Wednesday, October 26th, 1927.

"New York Operating #5023.

112 New York Investigator S-81 Reports:

Continuing surveillance of Burr"——

The Witness: That identifies the previous report, Major.
Mr. Gordon: Then what I said may not be necessary.

(Continuing reading:)

"I proceeded to the Motor Vehicle Department and passed the necessary examinations for obtaining a local drivers' license. At 11:00 A. M., I proceeded to Cafritz Co. on 'K' Street where I took up a watch for subject until 4:45 P. M., but did not see subject nor his car bearing license #P-993. I then went to vicinity of subject's home and saw his car parked outside.

At 8:15 P. M., subject entered his machine and drove off to 1447 Chapin Street, where he parked his car and entered the building.

At 9:15 P. M., he came out with the following described man: 5' 7" 150 lbs. thick set wearing gray felt hat and dark suit and overcoat. They drove to 14th Street, N. W. to Park Road and entered the Arcade Bowling Alleys.

At 10:20 P. M., they came out and drove to 15th Street, which is a dark and practically deserted street. They stopped the motor and sat talking until 11:35 P. M., when the man with subject left and walked to 1447 Chapin Street.

Subject then drove to his home, entering at 12:10 A. M. I remained on watch till 3:00 A. M., when I discontinued and turned my car into garage.

Expense $22.77.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 4."

"*Special Report.*

Washington, D. C., Thursday, October 27th, 1927.

"New York Operating #5023.
New York Investigator S-81.

Continuing surveillance of Burr, I obtained a Hertz Car, at 1:00 P. M., and proceeded to subject's home, but was unable to see either he or his car, license P-993.

At 3:10 P. M., I picked him up at 14th & 'H' Sts. N. W., where car was parked. Twenty minutes later he came walking down 14th Street and entered his car, driving to Evans Building at 1420 New York Ave., where he stayed a half an hour.

Leaving here he drove to Post Office on 14th Street, where he stayed a short time and then drove to Colorado Office Building at 14th & 'G' Sts.

Left here at 5:20 P. M., driving to his home. At 8:10 P. M., he left and drove to 1447 Chapin Street picking up the same man and going to Arcade Bowling Alleys.
113 They left at 11:45 P. M., and drove to 1447 Chapin Street where they had a short conversation, and man left, the subject going to his home, entering at 12:55 A. M.

I remained till 3:00 A. M., returned car to garage and taxied to hotel, discontinuing.

Expenses $19.15.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 3."

"*Special Report.*

Washington, D. C., Friday, October 28, 1927.

"New York Operating #5023.
New York Investigator S-81.

Continuing on the above operation, at 1:30 P. M., I went to the Hertz and hired a car and drove to vicinity of Cafritz Co., but did not see subject or his car. After several trips between his home and his place of business, I noticed his car parked at 14th Street and K Street, N. W.

At 4:30 P. M., subject drove to Brown Real Estate Co., at 1400 'H' St., N. W., coming out in ten minutes and going to the De Luxe Pool Parlor at 812 'H' Street, N. W. At 5:25 P. M., he drove to his home.

At 7:50 P. M., he came out accompanied by two women, one elderly the other about 27 years old. They drove to Keith's where the two women left and entered. Subject then drove to the Union Station and went to General Delivery window of the Post Office. On coming out he sat in car about 15 minutes then drove to 14th Street and Penna. Avenue, where I lost him at intersection due to traffic. I waited at the theatre till 11:00 P. M., in case he would come back for the two women, but I did not see either the subject or his car parked here.

I then returned to his home and saw lights in the house. These had been put out when they left for the theatre. I stayed on watch till 3:00 A. M., discontinuing.

Expense $21.63.

Time 1½ days."

Thereupon the witness was referred to pages 205 to 211, inclusive, of the above-mentioned book, which he identified as carbon copies of edited reports of operative S-71, Stewart, from October 18 to 24, inclusive, the originals of which were sent to Mr. Day.

Thereupon the Government introduced in evidence the following:

114 "GOVERNMENT'S EXHIBIT No. 17."

"*Special Report.*

Enroute to Washington, D. C.,
Tuesday, October 18th, 1927.

"Philadelphia Investigator S-71.

Pursuant to instructions from Asst. Mgr. M. L. W., at 9:30 P. M. I processed to Washington, D. C., to meet Manager C. G. R.

Expenses:

R. R. Fare	$4.90
Hotel	3.50
	$8.40

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 16."

"*Special Report.*

Washington, D. C., Wednesday, October 19th, 1927.

"New York Operation #5023.
Philadelphia Investigator S-71 Reports:

Continuing on the above operation, I arrived in Washington Terminal at 8:30 A. M., met Manager C. G. R., and was assigned to Hotel Harrington.

Was assigned Juror #5—Kidwell, and proceeded to Court House to obtain designation, but did not get in Court. I then went to subject's residence and awaited his return. Not seeing subject by 9:00 P. M., I discontinued.

Expenses $8.57.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 15."

"*Special Report.*

Washington, D. C., Thursday, October 20, 1927.

"Philadelphia Investigator S-71.

Under instructions from Mgr. C. G. R., I proceeded to Court to get designation on Juror #5—Edward J. Kidwell, Jr.

At lunch time subject ate sandwich under tree on Museum Grounds. After which he walked to Market House, returning to Court at 1:20 P. M.

After leaving Court he proceeded to Thophams Truck Mfg. Co., at 60 "L" Street, which he left at 5:10 P. M., accompanied by three other men, with whom he entered a car and was driven away. Was unable to get a cab or license number.

I then proceeded to vicinity of subject's home which I kept under close surveillance until 10:00 P. M., and as I did not see subject I discontinued.

Expenses $8.83.

Time 1½ days."

115 "GOVERNMENT'S EXHIBIT No. 14."

"*Special Report.*

Washington, D. C., Friday, October 21st, 1927.

"Philadelphia Investigator S-71.

Continuing surveillance on Juror #5—Kidwell, subject left his home at 7:15 A. M., and proceeded to his place of employment.

At 9:25 A. M., he left and boarded trolley going direct to Court House.

At 12:55 P. M., I was instructed by Manager C. G. R., to obtain a designation on Juror #9—Grufoil."

Mr. Burkinshaw: Grenfell.

Mr. Gordon: He spells it Grufoil. G-r-u-f-o-i-l.

(Continuing reading:)

"Subject went to small restaurant on 5th Street across from Court House. After eating lunch he walked around the block and then entered Court House.

As the jury was excused till Monday the subject returned to his place of business. On leaving he went to his home at 4:15 P. M.

I remained on watch till all lights were out in the house at 12:20 A. M., when I discontinued.

Expenses $9.57.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 13."

"*Special Report.*

Washington, D. C., Saturday, October 22nd, 1927.

"Philadelphia Investigator S-71.

Continuing surveillance of Juror #9—Gruefoil, subject left at 8:30 A. M., in his Ford Roadster and drove out 'H'

to Penna. Ave., where my taxi lost him, around 14th Street.

I then returned to subject's home and saw subject return at 9:30 A. M., with some clothes as tho he had just come from a tailor shop.

At 10:20 A. M., subject again drove out 'H' to Penna. Ave., when my taxi was again cut off in traffic at 14th Street.

Returning to subject's home I saw him arrive at 11:15 A. M. and after eating lunch he came out and worked on his car.

At 7:45 P. M. subject walked to Pool Room at 1740 Penna. Ave. leaving here in a few minutes he walked to Johnson's Restaurant at 1713 Penna. Ave., where he stayed about ten minutes. Leaving here he walked to Arlington Hotel, where a banquet was being held.

116 At 11:45 P. M., subject, accompanied with young couple got in cab, the couple letting subject off at his home and drove off.

Subject entered his home where he remained, so I discontinued at 1:45 A. M.

Expenses $16.02.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 12."

"*Special Report.*

Washington, D. C., Sunday, October 23rd, 1927.

"New York Operating #5023.

Philadelphia Investigator S-71 Reports:

Continuing surveillance of Juror #9—Grenfell, I proceeded to vicinity of his home at 7:00 A. M., securing a taxi to hold in readiness.

At 9:30 A. M., subject left his home with his brother in Ford Roadster and drove to St. Stevens Church at 25th & 'L' where he remained for about an hour and then drove to 1740 Penna. Ave., a Pool Room. Here he met a man and they went to Reid's Restaurant for lunch. They came out and got in other man's Essex Coach, license #N-5757, driving thru Potomac Park to Speedway, thence back thru East Potomac Park where they left car and watched foot-

ball game. They then drove to subject's home, where man left subject and drove off.

In about ten minutes subject came out and boarded Rosslyn trolley to bridge where he got a bus for Clarendon, Va. Left bus at Spruce Street and entered 26 house. About 30 minutes later subject and young girl left, walking to main road where they were picked up by man and woman in Hudson Coach, license #J-140 and drove to Washington, stopping at 1717 17th Street. The Traymore Apartment, where they remained about 30 minutes.

They again drove around the city, circling the Capitol and stopping at 921 19th Street, Cambridge Apartment. Subject and man made two trips to subject's home returning and staying at Cambridge Apartment about three hours. They then drove to #26 Spruce Street, Clarendon, Va., where subject and his girl entered the Hudson, going on.

At 11:30 P. M., subject left and returned home at 12:30 A. M. I discontinued at 1:45 A. M.

Expenses $36.31.

Time 1½ days."

"Government's Exhibit No. 11."

"*Special Report.*

Washington, D. C., Monday, October 24th, 1927.

"New York Operating #5023.

117 Philadelphia Investigator S-71 Reports:

Continuing surveillance on Juror #9—Grenfell, I proceeded to Court House at noon time.

At 12:50 P. M., subject came out and walked to 4th Street, where he talked to three or four cable men who were working there for the Potomac Power & Light Co. He then went in Court House Coffee Shop for lunch, coming out at 1:15 P. M. and talking to the two women jurors, at the Court House steps and entering at 1:20 P. M.

At 3:05 P. M. subject left with another juror and walked to 9th Street. He then walked to 11th Street & Penna. Ave., to a United Cigar Store, where he remained about five minutes. Here he boarded a trolley to 18th & Penna.

Ave., where he alighted and walked back to 1712 Penna. Ave. This place looks like a club of some kind. Subject stayed here till 5:00 P. M. when he went to his home for supper.

At 7:30 P. M. he came out and walked to 1712 Penna. and got in Ford Roadster, driving to 921 19th St., the Cambridge Apartments, where he stayed about 25 minutes, returning to 1712 Penna. Ave. There was only one light burning at this address and this was on the third floor.

At 12:15 A. M. subject left and went home. I remained in vicinity till 1:00 A. M., returning to my hotel and discontinuing at 2:00 A. M.

Expenses $14.92.

Time 1½ days."

Thereupon the witness was referred to pages 193 to 203, inclusive, of the above-mentioned book, marked Government's Exhibits for Identification 18 to 28, inclusive, which he identified as carbon copies of edited reports of operative S-70, Sullivan, from October 19, to October 25, inclusive. The originals of Exhibits 22 to 28, inclusive, were sent to Day. The originals of Exhibits 18, 19, 20 and 21, for October 25 and October 24 were not sent to Day. Exhibits 18 and 19 are duplicates, as are Exhibits 20 and 21.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 28."

"*Special Report.*

Washington, D. C., Wednesday, October 19th, 1927.

118 "Philadelphia Investigator S-70.

Acting under instructions from Asst. Mgr. M. L. W., I left the Agency at 10:00 A. M., packed a bag and boarded 11:36 A. M. train for Washington, D. C., arriving I met Manager C. G. R.

I was instructed to check into the Mayflower Hotel and await orders.

I met Manager C. G. R., at 8:30 P. M. and received instructions for the operation.

Expenses $14.20.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 27."

"*Special Report.*

Washington, D. C., Thursday, October 20th, 1927.

"Philadelphia Investigator S-70.

Continuing on the above operation, I proceeded to the Court House to obtain designation on Juror #9—Gardner P. Grenfell, of 1916 "H" Street, N. W.

When Court adjourned for lunch, subject *and* ate alone in the Court House Coffee Shop, returning alone, to Court at 1:30 P. M.

Subject left unaccompanied when Court Adjourned for day, proceeding to 9th & 'F" Street. At 'F' Street he stopped at drug store, between 13th and 14th Streets. He then proceeded to 16th & Penna. Ave., where he talked with man employed at cable splicing. He entered the open man hole, remaining under ground for twenty minutes. On leaving the manhole, he stood on corner talking to two of the workmen for several minutes. He boarded a Rosslyn St. trolley for his home.

Subject left his house at 7:30 P. M. in his shirt sleeves and worked on a Ford roadster, license number M-2092. Re-entering the house. I later saw him on the second floor, apparently a bed room.

At 9:50 P. M. all lights in the house were extinguished and after watching for several minutes, I discontinued.

Expenses $8.92.

Time 1½ day."

"GOVERNMENT'S EXHIBIT No. 26."

"Corrected.

Special Report.

Washington, D. C., Friday, Oct. 21st, 1927.

"Philadelphia Investigator S-70.

Continuing surveillance on Juror #9—Grufoil, subject left his home at 8:40 A. M., walking to 'H' & Penna.
119 Ave., where he boarded a trolley, leaving at 6th & Penna. and going directly to the Court House.

At noon recess I was assigned Juror #5—Kidwell, whom I picked up and took to Central Market where he had light lunch at Rock's Lunch Room. He then hastened back to the Court and I went to lunch."

The Court: Let me see, "—picked him up."

By Mr. Gordon:

Q. I will ask you: "picked him up" means began his operations?

A. Picked up the trail.

Mr. Hoover: "Took," he went behind, shadowing.

The Court: I am told it has another significance also in these days.

Mr. Gordon (continuing reading Exhibit 26):

"At 3:00 P. M., I learned jury was dismissed till Monday. Using a suitable pretext, I phoned subject's place of business and found he was no longer employed there but leave at 5:25 P. M., with three other men, entering Pontiac bearing the license #U-1-949. I followed in cab and car took round about way, leaving two men off at different places. Subject left car at 11th & 'U' St., S. E., and entered his home.

Subject was seen several times on porch conversing with next door neighbors. Was last seen at 8:50 P. M., and having apparently retired for the night at 11:00 P. M., I discontinued.

Expenses $13.32.

Time 1½ days."

Thereupon the witness continued. The expression "picked him up" that appears in Government's Exhibit No. 26 means picked up the trail.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 25."

"Special Report.

Washington, D. C., Friday, Oct. 21st, 1927.

"Philadelphia Investigator S-70.

120 Continuing surveillance on Juror #9—Grufoil—subject left his home at 8:40 A. M., walking to 'H' & Penna. Ave., where he boarded a Union Terminal trolley, leaving trolley at 6th & Penna. Ave., and going directly to Court House.

At noon recess I was assigned to Juror #1—Kern——"

Mr. Gordon: And over it is written in lead pencil "5—Kidwell."

(Continuing reading): "—whom I picked up and took to Central Market——"

Mr. Littleton (interposing): That is the other one.

Mr. Gordon: That may explain what the corrected report is.

Mr. Littleton: It is identical, except it is the other man.

The Witness: That explains it.

Mr. Gordon: I will say that these are identical reports, except the juror 5 refers to Kidwell, and the other to Juror Kern.

By Mr. Gordon:

Q. Now, which should it have been? A. It should have been Kern.

Mr. Littleton: It says the other way. The corrected special report shows Kidwell picked up and taken to Center Market. The other report should have been corrected.

The Witness: It should have been Kidwell.

By the Court:

Q. The previous report, as I understand it, referred to Kidwell too? A. The first report had the name Kerns, and it should have been Kidwell.

The Court: That is what I say, it was intended to refer to Kidwell? A. Yes, sir.

The Court: And by error, or whatever it may have been, Juror Kern is mentioned, and that is corrected in the later one. A. That is corrected in the later report.

Mr. Gordon (continuing reading):

"—where he had a light lunch at Rock's Lunch Room. He then hastened back to Court and I went to lunch.

At 3:00 P. M., I learned Jury was dismissed till Monday. Using suitable pretext I phoned subject's place of business and found he was no longer employed there but worked at 80 'L' St. N. E.

121 I then proceeded to his place of business and saw subject leave at 5:25 P. M., with three other men, entering Pontiac bearing license #H 949. I followed in cab and car took a round about way leaving two of the men off at different places. Subject left car at 11th & 'U' Streets, S. E., and entered his home.

Subject was seen several times on porch conversing with next door neighbors. Was last seen at 8:50 P. M., and having apparently retired for the night at 11:00 P. M., I discontinued.

"GOVERNMENT'S EXHIBIT No. 24."

"*Special Report.*

Washington, D. C., Saturday, October 22, 1927.

"Philadelphia Investigator S-70.

Continuing surveillance of Juror #5—Kidwell, I was instructed to turn this subject over to N. Y. Investigator K-27.

Together we proceeded to #80 'L' St., N. E., for the purpose of giving designation. After waiting from 6:55 A. M. to 9:30 A. M., without seeing subject enter factory, I called and using a suitable pretext learned subject was at work.

Giving N. Y. Investigator K-37 a detailed description of subject, I discontinued and reported to Manager C. G. R. at 11:00 A. M.

Expenses $9.39.

Time ½ day."

"GOVERNMENT'S EXHIBIT No. 23."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"Philadelphia Investigator S-70.

Acting under instructions of Manager C. G. R., at 12:00 Noon, I proceeded to Investigator O'Reilly's Hotel and

was given information relative to one Charles E. Burr of 1749 18th St., N. W.

I proceeded to subject's home but was unable to see him. I then went to vicinity of 14th & 'K' Streets, where subject is employed and as subject was not in I engaged an office girl in conversation but could not get any information on subject.

I then went to his home and talked to his wife, leaving my name and hotel, with word to have him get in touch with me.

As he did not call by 8:30 P. M., I proceeded to his neighborhood and saw his Chev. parked in front of his home. I then phoned him, talking about five minutes, finding him very reluctant to talk business, so rather than burn him up I concluded the conversation in such a way that I could call him later.

122 I later met a man by the name of Simmons, in the lobby of my hotel, who is a stock salesman but had been in the real estate game and is a personal friend of Cafritz. Mr. Simmons has promised to give me a connection arranging to meet him on Sunday at 2:00 P. M.

We had lunch together at midnight and after leaving him I reported to Manager C. G. R., discontinuing at 1:15 A. M.

Expenses 7.35.

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 22."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

Philadelphia Investigator S.70 Reports:

Continuing on the operation of Charles E. Burr, I left the hotel at 9:00 A. M. and proceeded to Wardman Park Hotel, where I received instructions from Manager C. G. R. I met Mr. Gordon Simmons at 2:30 P. M., as per arrangements and we sat and talked awhile in the hotel lobby. Later we went to Lowe's Palace Theater.

After the theater we had dinner at The Occidental, took a walk and went to the Kenisaw Apartments, a place where one may obtain refreshments.

Learned he has been selling Marmon Cars, Real Estate and Stocks and Bonds. At one time employed by Cafritz and knows some of the salesmen.

At 1:30 A. M. we had a lunch and he stated he was going to Laurel but would see me after the races.

This man is anxious I locate here and with my pretext I feel sure I will connect with Burr very shortly. I discontinued at 2:30 A. M.

Expenses $15.95.

Time 1½ days."

"GOVERNMENT'S EXHIBITS NOS. 20 AND 21."

Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

Philadelphia Investigator S-70 Reports:

Continuing on above operation, investigation of Charles E. Burr, I proceeded to subject's place of business at 10:00 A. M., in an effort to get a designation on subject.

123 Not seeing him by noon time I entered and made inquiries, learning he was out and would not be back till late in the afternoon. I called back later but he had not returned.

At 4:30 P. M., I met Mr. Simmons, had dinner and went to the theatre.

We then went to Claridge Apartments at 1604 'O' Street and had some refreshments. Mr. Simmons said that Burr had gone to the races but that he would try and introduce me tomorrow.

Returned to hotel at 3:00 A. M., discontinuing.

Expenses $14.00.

Time 1½ days."

"GOVERNMENT'S EXHIBITS NOS. 18 AND 19."

"Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.

Philadelphia Investigator S-70 Reports:

Continuing on the above operation, of investigating Burr,—I met Mr. Simmons by appointment at 11:00 A. M., and together we went to Cafritz's to meet the subject. Sub-

ject was out and they did not know when he would be back.

I was introduced to a couple of the salesmen, thinking I might use them also. Stayed around here all afternoon visiting with the boys.

At 7:00 P. M., I was instructed to return to Philadelphia.

Expenses $18.40.

Time 1 day."

Thereupon the witness was referred to pages 184 to 191, inclusive, of the above-mentioned book, marked Government's Exhibits for Identification Nos. 29 to 35, inclusive, which he identified as carbon copies of edited reports of operative O-3, O'Neill, from October 18 to October 24, inclusive, the originals of which were sent to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 35."

"*Special Report.*

Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

124 N. Y. Investigator O-3 Reports:

Continuing surveillance of Juror #10—Goucher, I proceeded to Court House and saw subject leave at 12:50 P. M., walking to Benedict's Lunch at 6th & Penna. Ave. Subject sat at the table alone and left at 1:05 P. M., returning to Court House at 1:15 P. M.

At 3:00 P. M., subject came out in company with the following described man: 35 yrs. 160 lbs. dark complexion dark brown hair 5' 10" rather slim. Wearing blue suit light gray felt hat black shoes. They walked to 3rd & 'D' Sts., and entered a Ford Coupe, license #K-7521, marked American Ice Co. and rode to subject's place of business.

At 6:25 P. M., subject got into a Ford Delivery, license #B-4731 and drove to his home arriving at 6:45 P. M.

Not seeing subject by 11:45 P. M., I discontinued.

Expense $19.65.

Time 1½ days."

Thereupon the witness continued: In my business a day is generally figured on an eight-hour basis.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 34."

"*Special Report.*

Washington, D. C., Sunday, October 23, 1927.

"New York Operating #5023.
N. Y. Investigator O-3 Reports:

Continuing surveillance of Juror #10—Goucher, I proceeded to vicinity of subject's home at 6:30 A. M.

At 10:00 A. M., subject came out driving the same car he had yesterday, but I lost him due to traffic conditions after a few blocks.

Returned to his home and saw subject drive up and put his car in garage at 2:30 P. M.

Remained on watch but seeing nothing of subject by 11:00 P. M. I discontinued.

Expenses $26.80.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 33."

"*Special Report.*

125 Washington, D. C., Saturday, Oct. 22nd, 1927.

"N. Y. Investigator O-3.

Continuing on surveillance of Juror #10—Goucher, subject left at 7:45 A. M., in Ford Del. Truck license #B-4731, with name W. S. Kenworthy of 1617 14th St., N. W. written on each side. He drove to this address and parked car going into gas station.

I saw subject at different intervals in the station during the day.

At 6:15 P. M., subject drove to his home arriving at 6:35 P. M. I could see him eating his supper with a woman and two children.

At 7:30 P. M., I noticed a Dodge Sedan license #J-4376 parked near the house, which was driven off at 8:30 P. M., by three women from house next to subjects.

I remained on watch and as subject did not come out again and had apparently retired at 11:30 P. M., I discontinued.

Expenses $24.25.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 32."

"*Special Report.*

Washington, D. C., Friday, Oct. 21st, 1927.

"N. Y. Investigator O-3.

Continuing surveillance on Juror #1—Kern, subject left house at 9:20 A. M. and proceeded to Court House by trolley, arriving at 9:45 A. M.

Under instructions from Manager C. G. R., I obtained a designation on Juror #10—Goucher.

At lunch time subject went to Benedict Restaurant, coming out at 1:20 P. M. and returning to Court House.

I kept watch on Court House until I was advised jury had been excused till Monday.

I then went to subject's house and watched for subject. As I did not see subject come out and all lights were out by 11:30 P. M., I discontinued at 12:00 Midnight.

Expenses $11.25.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 31."

"*Special Report.*

126 Washington, D. C., Thursday, Oct. 20th, 1927.

"N. Y. Investigator O-3.

Continuing holding Juror #1—John P. Kern—under surveillance. Subject left his home at 9:00 A. M., boarded car at 13th Street proceeding to Court House, entering about 9:45 A. M.

At recess he lunched with Juror #11 at Watts Restaurant, corner 5th & 'F' Streets.

After Court adjourned for day, a photograph was taken of Jury. Subject in company with Juror #11, walked up 'D' Street to 3rd entered Ford Sedan, license F-3739. Car was driven by Juror #11. As there were no cabs in sight, I proceeded to subject's home as quickly as possible, holding same under surveillance until 9:55 P. M. at which time I discontinued.

Northwest Motor Co. Herzog Car.

Expenses $9.25.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 30."

"*Special Report.*

Wednesday, October 19th, 1927.

"N. Y. Investigator O-3.

Arriving in Washington at 6:30 A. M. I waited in the Station till 8:30 A. M. Met Manager C. G. R. who gave me instructions to check in the Capitol Park Hotel.

Later I received instructions to place under surveillance Juror Number 1 John P. Kern.

I entered the court room and located subject who is about 30 years 160 lbs. 5' 9" smooth shaven rather slim nose has been broken dress dark suit and black shoes.

At 3:00 P. M. court adjourned subject left by back way. I was therefore unable to pick him up and I proceeded by taxi to his home 1315 N. C. Ave., N. E. and kept house under surveillance.

At 7:00 P. M. subject came out and went to drug store on corner of 13 and E. Capitol. He came in contact with no one enroute to or from the store. After making a purchase he returned home.

I remained in the vicinity until 9:45 P. M. subject evidently retired for the night I discontinued.

Expenses:

Room and meals	$8 00
Taxi	75
Carfare & Telp.	.25
Supplies	25
	$9.25

Time 1½ days."

127 "GOVERNMENT'S EXHIBIT No. 29."

"*Special Report.*

Washington, D. C., Tuesday, Oct. 18, 1927.

"N. Y. Investigator O-3.

Acting under instructions from Mgr. T. A. S. I left office of agency at 6:00 P. M. packed a bag and proceeded to Washington, D. C., on midnight train, where I was to meet Manager C. G. R.

Expenses:

R. R.—Pullman & tip	$12 14
Subway & telephone	15
Supper	1 00
	$13 29

Time 1 day."

Thereupon the witness was referred to pages 172 to 183, inclusive, of the above-mentioned book, marked Government's Exhibits for Identification 36 to 46, inclusive, which he identified as carbon copies of edited reports of operative M-20, Merritt, from October 19 to October 28, inclusive, the originals of which were sent to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 46."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19th, 1927.

"New York Operating #5023.
New York Investigator M-20 Reports:

Pursuant to instructions from Principal W. J. B., I left the Agency at 12:00 Noon, packed bag and proceeded to Washington, D. C., to meet Manager C. G. R.

Upon arrival I was given Juror #10—Goucher as may subject.

I checked into the Washington Hotel and discontinued.

Expenses $17.52.

Time 1 day."

Thereupon the witness continued. Principal W. J. B. referred to in Exhibit 46 is a mistake made by Robbins in writing the report. It should be W. S. B. I know that from the original report which Mr. Gordon has in his possession.

128 Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 45."

"*Special Report.*

Washington, D. C., Tuesday, October 20, 1927.

"N. Y. Investigator M-20.

Under instructions of Mgr. C. G. R., I proceeded to Court House and got designation on Juror #10—William H. Goucher of 1408 Franklin St., N. E.

At recess, subject lunched at nearby restaurant, returning to Court at 1:00 P. M., where he sat on steps till Court opened.

Shortly after 3:00 P. M., Court adjourned for the day, and Jury had their pictures taken.

Subject, accompanied by another man, entered a coupe license #K-7521, car I believe is owned by American Ice Co.

Endeavored to locate subject's place of business without success. I then proceeded to subject's home. This is a cheap frame two-story building—only two other houses on the block—making it difficult to cover subject's home.

Remained in vicinity until 9:50 P. M., and seeing nothing of subject I discontinued.

Expenses $8.32.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 44."

"*Special Report.*

Washington, D. C., Friday, October 21st, 1927.

"N. Y. Investigator M-20.

Continuing surveillance of Juror #10—Goucher—I kept close watch on subject's house until 9:40 A. M., when I was instructed to return to my hotel and await orders.

Pursuant to instructions, I returned to Court House and endeavored to obtain a designation on Juror #1—Kern—which I did when he left Court about 1:00 P. M.

Subject left with Juror #11 and walked to 'D' & 4th Sts., where they entered Ford bearing license #F-3739. There was no cab in vicinity to follow.

I visited all restaurants in the neighborhood but failed to find subject, so I returned to parking place to await for their return.

As they did not return, I went to Court and learned the Jury had been recessed until Monday. Immediately
129 I went to subject's residence and at 7:00 P. M., subject got out of a smart looking, high powered touring car. All I could get of the license was the letter and the first two numbers—#D 58—

I held the house under close watch all evening, and at 8:10 P. M. a woman came out. At 8:40 P. M. a boy about 10 years old came out and got into a car bearing license #N-5259. Car was driven by girl who lives in 1317 North Carolina Ave., N. E.

During the evening I could hear someone using a hammer in the cellar of subject's home.

As I did not see anything of subject by 11:00 P. M., I discontinued.

Expenses $8.60.

Time 1½ days."

Thereupon the witness was handed a letter which he identified as being the original of the report marked Government's Exhibit No. 46, which he just referred to as being Sherman Burns instead of W. J. Burns, and which was then marked Government's Exhibit No. 47 for identification. Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBITS NOS. 42 AND 43."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"N. Y. Investigator M-20.

Acting under instructions from Manager C. G. R., I proceeded to the vicinity of 1315 N. C. Ave., N. E., to get a designation on Juror #1—Kern.

At 8:30 A. M. subject drove up to house in Hudson Sedan bearing license #G 2462, entering the house. He came out at 9:10 A. M., and walked to Walls Hardware Store at 106 13th St., N. E., where he remained a few minutes and then returned to his home.

At 9:40 A. M. a man drove up to the subject's house in an auto bearing the license #Q 7877. This is the machine mentioned in yesterday's report. The subject got in auto and drove off with this man. I succeeded in getting a cab but the driver refused to do any trailing.

I then proceeded to the Holmes Bakery at 107 'F' St., N. W., and saw the auto there, the subject was in the building.

I then phoned N. Y. Investigators S-81 and D-9, to join me as I thought I might be able to designate subject's brother to them.

130 A man driving a Lincoln——"

The Court: I didn't catch that.

Mr. Gordon (reading):

"I then phoned N. Y. Investigators S-81 and D-9, to join me as I thought I might be able to designate subject's brother to them.

A man driving a Lincoln bearing license #Q-7877, was thought to be a brother, but learned otherwise later.

At 11:40 A. M. the subject and another man got into a Chev. Coupe bearing license #S-9859 with some packages and rode away. They returned after a brief absence. I was unable to get a cab to follow.

During the day I saw the subject at different intervals about the bakery. At 8:30 P. M., a man whom I thought was the subject entered the Chev. and drove off. I obtained a cab and accompanied with N. Y. Investigators D-9 and S-81 we followed the car to 13th & N. C. Ave., N. E.

As this was not the subject I then proceeded to subject's home and saw subject, an old man and two other men enter the house getting out of auto #G-2462. These people were probably subject's father and brothers.

At 10:15 P. M., some people got into the last mentioned car and drove off but as subject was not with them I let the car go.

I kept house under surveillance and not seeing subject again I discontinued and returned to my hotel at midnight.

Expense $10.52.

Time 1½-day."

"GOVERNMENT'S EXHIBIT No. 41."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23, 1927.

"New York Operating #5023.

N. Y. Investigator M-20 reports:

Continuing surveillance on Juror #1—Kern, I proceeded to vicinity of subject's home at 8:30 A. M., being joined by N. Y. Investigator D-9, who was to try and obtain a designation on my subject's brother.

Shortly after 1:00 P. M., the Hudson drove up to the door.

The subject came out on the porch.

At 2:30 P. M., subject came out and sat in car a few minutes returning to the house.

At 3:20 P. M., subject with 9 year old girl went to Home Motion Picture Theatre.

131 At 5:15 P. M., subject and girl came out the show and got in Hudson car which wife had brought, and drove home.

In a few minutes they again drove off, but we lost them in traffic.

At 8:20 P. M. a policeman called at subject's door but got no response. Thinking he had been called by subject, we left the vicinity for a while. Policeman went to Lamb's Drug Store.

On our return, the lights were lit on the upper floor. A man could be seen preparing for bed. The woman pulled down the shades at 9:15 P. M., and the house was in darkness at 10:00 P. M.

I discontinued at 11:45 P. M.

Expenses $10.94.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 40."

"*Special Report.*

Washington, D. C., Monday, October 24th, 1927.

"New York Operating #5023.

N. Y. Investigator M 20 Reports:

Continuing surveillance of Juror #1—Kern, I proceeded to the Court House at noon time.

At 12:55 P. M., subject came out and stood talking to four other men, one of which I recognized as being greeted the other day by a woman with—"Hello there, rejected Juror." Subject went to 6th & 'D,' returning to Court at 1:20 P. M.

At 3:01 P. M., subject came out with Juror #11, and N. Y. Investigator D 9 and myself placed him under surveillance. They entered Juror #11's Ford and drove off.

We then proceeded to Holmes Bakery but saw nothing of subject, but we noticed the Lincoln and Chevrolet parked there, mentioned in yesterday's report.

At 6:00 P. M., we proceeded to subject's home and saw subject in house, the Hudson was parked in front.

At 7:40 P. M., a man came out, using a search light to see the steps and disappeared up the street. It was too dark to get a description of him. A short time later a man, who am almost sure was the same, drove a car out of the side street, license #Q-7387. This side street contained several parked cars and is by a church.

At 7:55 P. M., subject drove away in the Hudson, and being unable to follow, I awaited his return, which was at 8:10 P. M. on foot.

Seeing nothing of subject we discontinued at 12:00 M.

Expenses $7.96.

Time 1½ days."

1311/2 "GOVERNMENT'S EXHIBIT No. 39."

"Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.

New York Investigator M-20 Reports:

Continuing on the above operation, I held myself in readiness for orders from 9:00 A. M.

Checked out the Washington Hotel and checked into the Wardman Park.

At 9:00 P. M., I proceeded to vicinity of Juror #5's home in an effort to get designation on subject.

At 10:30 P. M., a man answering the description of the Barber entered the house.

A man came out of a nearby house and got into a car, license #6-9177, and seemed very much worried about me, following me in his car. Finally he drove to Police Sergeant, who was parked in a car two blocks away. The Sergeant stopped me stating I had been reported as a suspicious character. He questioned me very closely and told me his instructions were to take in any strangers hanging around after 11:00 P. M. He put me in his car, but after talking to him, he finally put me on a trolley going in town, following the car for about ten blocks.

I later reported to Manager C. G. R., discontinuing at 2:00 A. M.

Expense $15.11.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 38."

"Washington, D. C., Wednesday, Oct. 26th, 1927.

"New York Operating #5023.
New York Investigator M-20 Reports:

Continuing surveillance of Juror #5, Kidwell, I proceeded to the Court House at 11:00 A. M., and got a designation on subject."

The Court: What was the date of that report?
Mr. Gordon: October 26.

(Continuing reading:)

"At 3:00 P. M., subject came out with several other Jurors, who got in different cars and drove off. By
132 the time I crossed the street the subject had disappeared. Whether he went with one of the cars I do not know.

I then proceeded to his place of business, but could not see him there.

At 6:00 P. M., I went to the vicinity of his home but was unable to see my man.

I then called Manager C. G. R., who instructed me to assist New York Investigator O-14 in his surveillance of Lamb.

At 8:15 P. M., we drove to Campbell's Corners to the Congressional Country Club, where subject was last seen, but could not find his car parked anywhere on the grounds.

We then returned to his home, but car was not there. While cruising about, we picked him up near the D. of J. Building (Department of Justice Building) and on arriving at the building he picked up two women, one of which he drove to Ward Apts. at 'S' St., near 3rd St. N. E., the other to Farday Apts. at Irving & 15th St. N. W.

The subject then returned to his home, putting the car in garage at rear of Carnegie Institute and entered 149 15th Street, N. W., at 11:55 P. M.

At 1:00 A. M., we reported to Manager C. G. R., discontinuing.

Expenses $8.87.
Time 1½ days."

"GOVERNMENT'S REPORT No. 37."

"*Special Report.*

Washington, D. C., Thursday, Oct. 27th, 1927.

"New York Operation #5023.
New York Investigator M-20 Reports:

Continuing surveillance of Juror #5—Kidwell, I proceeded at 11:15 A. M., to the Court House and saw subject return at 1:30 P. M., after noon recess.

At 2:55 P. M., subject came out and walked to 5th & 'G' St., N. W., where he boarded a trolley getting off at and walking to the Topham Leather Goods Factory at #80 'L' Street, N. W.

I kept this place under close watch till 7:00 P. M., but did not see subject leave. Factory runs thru to Pierce Street.

Reported to Manager C. G. R., and was instructed at 8:30 P. M. to return to my room and await further instructions, discontinuing at 12:00 midnight.

Expenses $8.65.

Time 1½ days."

133 "GOVERNMENT'S EXHIBIT No. 36."

"*Special Report.*

Washington, D. C., Friday, Oct. 28th, 1927.

"New York Operation #5023.
New York Investigator M-20 Reports:

Continuing on the above operation, at noon time, I purchased a camera, under instructions of Manager C. G. R.

At 2:30 P. M., I met Philadelphia Investigator L-36 at the Court House.

At 3:10 P. M., subject—Juror #4—left the Court House and drove to 129-131 Eleventh Street, where he entered at about 3:25 P. M., leaving at 5:00 P. M., and driving to #49 New York Ave., N. W. There was an auto parked in front of house which the subject scrutinized closely. License and owner given in Philadelphia Investigator L-36 report.

Subject left here driving to his home at 5:50 P. M.

At 7:00 P. M., subject and wife drove off, but owing to traffic conditions we lost them at 9th & Penna. Ave. After cruising about the vicinity we returned to his home and saw them come home at 9:00 P. M., the lights going out at 9:20 P. M.

We remained in vicinity till 12:30 A. M., returning to the hotel at 1:30 A. M., discontinuing.

Expenses $22.06.

Time 1-½ days."

Thereupon the witness was referred to pages 160 to 171 inclusive, of the above mentioned book, marked Government Exhibits for Identification 48 to 58, inclusive, which he identified as carbon copies of edited reports of operative L-36, a man named Long but since identified as McMullin, from October 18 to October 28, inclusive, the originals of which were sent to Day. Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 58."

"*Special Report.*

Enroute to Washington, D. C.,
Tuesday, Oct. 18th, 1927.

"Philadelphia Investigator L-36.

134 Acting under instructions from Asst. Mgr. M. L. W., I reported to the office of the Agency at 6:00 P. M., and was told to proceed to Washington, D. C., and meet Mgr. C. G. R.

I immediately proceeded to Washington, D. C.

Expenses:

R. R. Fare	$4.90
Supper	1.00
Car fare	.30
Hotel	3.50
	$9.70

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 57."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19, 1927.

"Philadelphia Investigator L-36.

Continuing on the above operation, arriving at Washington, I was met by Mgr. C. G. R. and ordered to the Hotel Harrington.

I was given Juror No. 4 to shadow—Normal Glasscock of 1013 Eighth Street, N. W.

I proceeded to the Court to obtain a designation, but could not get into the Court on account of the crowd. I then went to subject's home and saw man enter house resembling subject at 5:30 P. M.

At 8:25 P. M. subject came out and entered a small car, bearing D. C. license #P-993. Another man was with subject—about 30 yrs. 5' 8" about 150 lbs. Together they drove to the Post Office Building at 11th and Penna. Ave., staying about a half an hour. Leaving here they returned to subject's home and leaving subject, the other man drove off.

I kept house under close watch until 12:00 midnight, when I discontinued.

Expenses:

Room	$5 00
Meals	3 35
Supplies	15
Mileage (18)	3 06
	$11.56"

Time 1½ days.

"GOVERNMENT'S EXHIBIT No. 56."

"*Special Report.*

Washington, D. C., Thursday, October 20th, 1927.

"Philadelphia Investigator L-36."

Written in lead pencil opposite that, "Subject's car."

(Continuing reading:)

Continuing surveillance of Juror #4—Normal L. Glasscock—subject left his home in light gray touring
135 Oldsmobile License Q-5718, drove to Sommerville's at 13th below 'D', S. E., leaving there at 9:45 A. M., driving to Court House.

At lunch time, left Court going to Curry's store at 3rd & 'D', remaining 15 minutes. He came out reading a newspaper. He then proceeded along 'D' to 4th and stopped to read the paper, leaning against the house. He dropped the newspaper and slowly returned to Court House.

Leaving Court at 3:15 P. M., subject and two other Jurors walked to 3rd & 'D', where he entered his auto alone, drove to Sommerville's.

Leaving here at 5:30 P. M., driving home, where he remained till 8:15 P. M., accompanied by two women and another man, they entered his car and drove slowly down thru Potomac Park and proceeded to 11th & 'F' N. W., parked car and entered Loew's Columbia Theatre.

Leaving theatre at 11:00 P. M., they all return with subject and entered house.

I discontinued operations, at 11:30 P. M.

Expenses $13.66.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 55."

"*Special Report.*

Washington, D. C., Friday, October 21st, 1927.

"Philadelphia Investigator L-36.

Continuing surveillance on Juror #4—Glasscock, subject left his home at 7:15 A. M., and drove to his place of business.

At 9:50 A. M., he came out and drove to Court House.

At 12:55 P. M. he left Court House and drove home, returning at 1:30 P. M.

I returned to Court House at 2:30 P. M. to continue surveillance and learned Jury had been dismissed till Monday. I then went to his place of business and there saw his car.

At 5:25 P. M., subject left plant and drove home. He came out again at 5:40 P. M., with woman and two children and drove to Monmouth, Md.—about 22 miles S. E. of Washington—and entered third house on right side of road as you go into Monmouth on the main road.

Subject and family left here at 9:25 P. M., arriving home at 10:25 P. M., and they all entered the house.

I remained on watch until 11:30 P. M., when I discontinued.

Expenses $24.61.

Time 1½ days."

136 "GOVERNMENT'S EXHIBIT No. 54."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"Philadelphia Investigator L-36.

Continuing surveillance on Juror #4—Glasscock, subject came out of house at 7:25 A. M., driving to 14th & 'C' Sts., where he parked his car and walked to Sommerville Brass Works at 13th and 'D' Sts., and entered.

At noon time he drove to his home and I noticed he was being followed by a Chev. Coupe license #U-202. Subject left his home at 12:30 P. M., returning to the Works at 1:15 P. M., where I again noticed the Chev. Coupe.

At 3:20 P. M., subject came out and drove home, this time being followed by Oakland Rdstr. License #P-1738.

At 3:40 P. M., subject and family drove to Potomac Flying Field and on arrival noticed that the Oakland Rdstr. had already arrived ahead of us. Description of driver of Oakland Car; 5' 9" slender build 150 lbs. ruddy complexion shabby blue suit old brown shoes dark brown balmacan coat with cap to match of a shabby appearance. He talked with the subject for about 20 minutes and then got in the Oakland and drove off.

Subject remained till 5:10 P. M., when he drove his family home. The lights down stairs were switched off and the upstairs lights put on, at 9:00 P. M. These were put out at 9:15 P. M.

I remained on watch till 11:30 P. M., when I discontinued.

Expense $23.70.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 53."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, I proceeded to subject's home at 7:00 A. M. and kept a strict watch for subject.

At 10:30 A. M., subject came out and tinkered around his car, which was in front of his home.

He did not come out again till 2:00 P. M., when he and his family drove to Upper Marlborough, Annapolis and then to Chesapeake Beach where they had supper at 5:30 P. M.

137 Subject then drove back to Annapolis, thence to Hyattsville, where I lost subject due to traffic jam at fork of road.

Returned to Washington and saw subject's car parked in front of his home. Lights were put out on first floor at 9:05 P. M., lights out on second floor at 9:30 P. M.

I remained on watch till 11:00 P. M., when I discontinued and returned to my hotel.

Expenses $28.20.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 52."

"*Special Report.*

Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, I proceeded to the Court House at Noon time.

Subject came out at 12:50 P. M. and went to his car, driving 1013 Eighth St., returning at 1:25 P. M. and parking his car at 3rd & 'D' Streets.

At 3:30 P. M., subject left the Court House, driving to his place of business, where he remained till 5:30 P. M.,

when he drove to his home, where he remained the balance of the evening.

Lights turned out on first floor at 9:20 P. M. Lights out on second floor at 9:35 P. M.

Remained until 11:30 P. M., when I returned to my hotel and discontinued.

Expenses $23.40.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 51."

Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.

Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, I proceeded to the Court House at Noon time.

At 12:50 P. M., subject came out and entered Chev. Sedan, license #M-689, driving to his home, returning at 1:20 P. M.

At 3:00 P. M., subject left Court House and drove to his place of business, where he remained till 5:35 P. M., I noticed the following described man loitering about the
138 plant: 6' 200 lbs. blue suit black soft hat. He watched my car and movements, disappearing at about 5:00 P. M.

At 5:35 P. M., subject came out of plant and got in his own car (Oldsmobile #Q-5818) and drove home. Here I noticed a man 5' 10" slender blue suit light gray coat and hat. He remained near subject's house till 7:45 P. M., when subject left in his car. Owing to traffic conditions I was unable to hold him.

Subject returned at 9:40 P. M., where he remained for the balance of the evening.

I discontinued at 3:00 A. M.

Expense $24.84.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 50."

"Washington, D. C., Wednesday, Oct. 26th, 1927.

"New York Operating #5023.
Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, I proceeded to the Court House at 2:35 P. M.

"At 3:00 P. M. he came out driving to 3rd St. and-e 'E' and bought gas and oil, continuing to his home, parking his car on 'L' St. due to no parking space on his block.

He then walked to his next door neighbor—1015 Eighth St., and sat on bench in front yard with his wife and children and the lady of the house.

At 4:30 P. M., his wife went home, he following at 4:50 P. M.

At 6:20 P. M., subject and family *and* drove thru Anacostia—out in the country. He stopped along the road for about five minutes, lifting the left side of the hood and tinkered with the motor. He then drove the family back to his home, arriving at 8:40 P. M.

The lights were extinguished at 9:05 P. M., and I remained on watch till 3:00 A. M., when I returned to my hotel and discontinued at 3:30 A. M.

Expense $22.92.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 49."

"*Special Report.*

Washington, D. C., Thursday, Oct. 27th, 1927.

"New York Operating #5023.
Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, 139 I proceeded to the Court House at 2:30 P. M.

"At 3:00 P. M. he came out driving to 3rd St. and-e 'E' of business.

At 5:25 P. M., subject left and drove home.

At 7:30 P. M., I observed subject and two women visiting in subject's parlor till 10:25 P. M.

At 10:35 P. M., the house was in total darkness.

During the evening a Chevrolet Touring, License #207-501 MD stopped in front of subject's home. No one got out or in the car while it remained there for about an hour.

Another car, containing a man and a woman drove up and down the block, parking above and below and opposite the subject's home. License #6748.

At 10:30 P. M., a Packard Sedan, license #H-1874, parked in front of subject's house for about 15 minutes, then driving up and down street he disappeared.

I remained on watch till 3:00 A. M., when I discontinued.

Expenses $25.01.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 48."

"*Special Report.*

Washington, D. C., Friday, Oct. 28th, 1927.

"Philadelphia Investigator L-36 Reports:

Continuing surveillance of Juror #4—Glasscock, I proceeded to the Court House at 2:15 P. M., accompanied by N. Y. Investigator M-20.

At 3:00 P. M., subject came out and drove to 129-131 Eleventh St. N. E. This is a four story brick dwelling. He came out at 5:00 P. M. driving to 49 New York Ave., N. W., where he looked at the license of a Dodge car parked in front, shaking his head as tho he was expecting to find it here. License #P-2862—belonging to C. M. Rodeffer at 49 New York Ave. Subject entered here at 5:15 P. M. and left at 5:50 P. M., driving to his home.

Subject and wife came out at 7:00 P. M. but owing to traffic conditions we lost him at 9th & Penna. Ave. After cruising about the vicinity without success we returned to his home and saw subject and wife return at 9:00 P. M., the lights going out at 9:20 P. M.

We remained in the vicinity till 1:30 A. M. discontinuing.

Expenses $18.34.

Time 1½ days."

140 Thereupon the witness was referred to pages 155 to 159, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 59 to 63,

inclusive, which he identified as carbon copies of edited reports of operative K-37, Knowles, from October 20 to October 24, inclusive, the originals of which were sent to Day. Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 63."

"*Special Report.*

"En Route to Washington, D. C.,
Thursday, October 20, 1927.

"Philadelphia Investigator K-37.

Acting under instructions from Asst. Mgr., M. L. W., I went to West Philadelphia Station, boarding the 9:23 P. M. train for Washington, D. C., where I was to meet Manager C. G. R.

Upon arrival I was met by Manager C. G. R., who instructed me to check into the hotel and await orders.

Discontinued at 1:30 A. M.

Expenses $10.38.

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 62."

"*Special Report.*

Washington, D. C., Friday, Oct. 21st, 1927.

Philadelphia Investigator K-37:

Pursuant to instructions from Manager C. G. R., I proceeded to the Court House to obtain a designation on Juror #11—Herzog. I was unable to get into Court owing to crowded condition.

At noon recess I endeavored to pick subject as jurors left, but was not successful.

I then proceeded to subject's home and kept a close watch for him. At 4:05 P. M., subject drove up in his Ford, bearing the license #P-3739, parking opposite his home and entering. At the same time I noticed a blue Buick sedan, license #X-2102, drive slowly past several times observing subject's home.

At 4:25 P. M., subject drove off, I following in a cab. He circled thru the N. E. section and then swung
141 over the N. W. section not making any stops. At 12th & 'E' N. W., I lost subject due to traffic conditions.

I then returned to his home and waited. Subject arrived on foot about 6:15 P. M.

At 10:30 P. M. subject prepared to retire, putting out all the lights on first floor and going upstairs. After a few minutes the lights on the second floor went out.

I remained until 11:30 P. M., and as there was no further activity, I discontinued.

Expenses $11.47.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 61."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"Philadelphia Investigator K-37:

Continuing surveillance of Juror #11—Herzog, I proceeded to subject's home at 6:30 A. M.

Subject left in his car and drove to his business, The Northeast Motor Co., 920 Bladensburg Rd., N. E., at 8:15 A. M.

At 10:20 A. M. subject drove to his home. At 10:45 A. M. subject and a middle aged woman drove off, I following in taxi, but lost him due to traffic conditions.

I then returned to his home to await his return. At 12:45 P. M. subject arrived alone in his car going into the house for about ten minutes and again driving off, my taxi driver being new, was unable to keep on the trail. So I returned to subject's home and at 3:50 P. M., a Ford Sedan bearing license T-70204 Virginia, driven by a tall heavy set man, arrived with the woman who had accompanied the subject when he left at 10:45 A. M. Both entered the house.

At 4:05 P. M., this man drove to subject's place of business, parked his car and went in and talked with some of the help, so I returned to the subject's home, and saw subject arrive at 6:05 P. M.

At 8:05 P. M., subject drove off in a taxi which had been called by phone and I could not follow as there were no cabs available.

At 9:00 P. M., two young men and two girls drove off in the subject's car, there being no cabs available to follow.

I remained in the vicinity and as I did not see subject by 12:30 A. M., I discontinued.

Expenses $13.28.

Time 1½ days."

142 "GOVERNMENT'S EXHIBIT No. 60."

"*Special Report.*

Washington, D. C., Sunday, October 23rd, 1927.

"New York Operating #5023.

Philadelphia Investigator K-37 Reports:

Continuing surveillance of Juror #11, Herzog, I proceeded to vicinity of his home at 6:30 A. M. and saw his car parked out front.

At 2:10 P. M., subject and two women entered his car and drove several miles out North Capitol Street. At North Capitol they turned back and returned to his home. They then drove to N. C. Ave. & Capital, where my taxi was held up on account of traffic, losing the subject.

I then returned to the subject's home and saw the party return at 10:45 P. M.

As the subject did not leave the house again, I discontinued at 12:30 Midnight.

Expenses $10.82.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 59."

"*Special Report.*

Washington, D. C., Monday, October 24, 1927.

"New York Operating #5023.

Philadelphia Investigator K-37 Reports:

Continuing surveillance of Juror #11, Herzog, I proceeded to the Court House at noon time.

At 12:30 P. M., subject came out and lunched at the Capitol Lunch, returning to the Court House grounds and conversing with several men at the side entrance, finally entering at 1:20 P. M.

At 3:00 P. M., subject left accompanied by Juror #1 and entered his car and drove off.

I proceeded to his home but could not see his car and then I went to his place of business. Subject's car was here and he was talking to some of the help. I observed a Ford Sedan, license #S-5099, parked in front of the garage, the driver talking to subject. On leaving the subject he past by me observing me closely and returned to talk with subject. Subject drove around the block, reentering the garage.

The Court: I did not understand that. Will you read it again?

Mr. Gordon: "I observed a Ford sedan, license #5099, parked in front of the garage, the driver talking to
143 subject. On leaving the subject he passed by me, observing me closely and returned to talk with subject." That is the man who was driving the Ford car.

The Court: Yes, I understand that.

Mr. Gordon (Continuing reading:) "I changed my position and man in Ford again passed me looking me over very closely.

At 5:10 P. M., subject drove home in a circular direction.

At 7:00 P. M., subject, accompanied with a medium aged stout built woman drove to 15th & Maryland to a candy store. After leaving here subject drove thru a side street, made short turns in middle of block and went to Loew's Palace Theatre.

At 11:00 P. M., they left theatre and drove home and I discontinued at 12:30 A. M.

Expenses

Expenses $24.32.

Time 1½ days.

155."

Thereupon the witness was referred to pages 146 to 153, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 64 to 70, inclusive, which he

identified as carbon copies of edited reports of operative L-27, Klein, from October 18 to October 24, inclusive, the originals of which were sent to Day.

Thereupon the Government offered in evidence the following letter of October 29, 1927, from Charles G. Ruddy to Sherman Burns, and it was received in evidence and marked Government's Exhibit 71:

"Washington, D. C., October 29th, 1927.

"Mr. W. Sherman Burns,
New York Office.

Dear Mr. Burns:

As per your instructions received through Mr. Vietsch of Baltimore, I am forwarding you herewith the time and expense sheets for all employed on the operation. Also all reports up to and including Thursday, October 27th.

Mr. Vietsch said you were of the opinion that the
144 men should be checked in at hotels where the rates are cheaper. For your information the client directed that all those retained on the operation be ordered to move into the Wardman Park Hotel.

On my arrival here it was decided by the client that this hotel was the best for me to be at. It being close to the residence of client and still out of the beaten path.

Of course the expenses have been high, but you will see that car hire has been the big item, Taxi cabs were not used after the first few days for surveillance, as they are too easily spotted. We have been renting cars for the past week.

As to reports I told you previously that they are rendered in brief each day to the client. I have the copies of these brief reports with me as it is at times necessary to refer back and will bring them in when the operation is completed.

I am addressing this to you through Miss Keightly.

Yours very truly,

C. G. RUDDY."

Thereupon the witness continued:

When, in the above letter, I referred to the fact that Wardman Park Hotel was nearer to the residence of the client, I mean Day as the client. His residence at that time was 2118 Leroy Place, just off Connecticut Avenue. Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 70."

"*Special Report.*

En Route to Washington, D. C.,
Tuesday, Oct. 18th, 1927.

"N. Y. Investigator K-27.

Pursuant to instructions received from N. Y. Mgr. T. A. S., I left the Agency at 3:45 P. M., packed my bag, returning at 6:00 P. M., and was told to proceed to Washington, D. C., and meet manager C. G. R.

Left New York on the 12:35 A. M. train.

Expenses:

R. R. Fare and Pullman	$11.89
Carfare	.20
Supper	1.00
	$13.09

Time 1 day.
153."

145 "GOVERNMENT'S EXHIBIT No. 69."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19, 1927.

"N. Y. Investigator K-27.

Continuing on the above operation, I received instructions to place under surveillance Juror #8, Bernice K. Heaton, of 1228 Eye St., N. W.

I proceeded to subject's home, acquainted myself with neighborhood. I then went to Court House, picked up subject, who left with Juror #7.

Description of subject age 30, 5' 6" 125 lbs., slender blonde, hair does not appear to be bobbed, light complexion, dress: tan hat, tan coat, collar and front trimmed with deer skin fur, light colored stockings and tan shoes.

Subject and Juror #7 boarded trolley at 5th & 'D' Sts. Subject alighted at Eye & 14th Sts., N. W. Entered Frazer Potomac Laundry 827 13th St., N. W. Walked to 1228 Eye St., entering at 3:30 P. M.

This is a large apartment house and can be entered thru three stores fronting on 13th Street, numbers 823, 825, 827. Subject had no male escort en route from Court House.

At 7:50 P. M. subject came out accompanied by woman whose age is 22 yrs. 5' 6" slender build 120 lbs., wearing gray hat, and entered Red Top Cab #317. There being no other cabs in sight I was unable to follow and phoned Mgr. C. G. R.

I remained in vicinity of subject's house until 10:00 P. M. up to which time subject did not return.

Discontinued at 10:45 P. M.

Expenses $8.80.

Time 1½ days.

152."

"GOVERNMENT'S EXHIBIT No. 68."

"*Special Report.*

Washington, D. C., Thursday, Oct. 20, 1927.

"N. Y. Investigator K-27.

Continuing holding Juror #8, Miss Keaton, under surveillance, subject left her home at 9:20 A. M., proceeded to Court by trolley, arriving at 9:40 A. M.

At recess, accompanied by Juror #7, she went to Court House Shoe Shining Parlor, after which they lunched at Coffee Shop.

Leaving Court they shopped at the following stores:
Hechts Dept. Store, Phillipsborn Dept. Store, Brooks
146 Ladies Store, Stevens Ladies Shop and Roselin Shop. They separated at 14th & New York. Subject arriving home at 6:00 P. M.

Not seeing subject by 10:00 P. M., I discontinued.

Expenses $8.77.

Time 1½ days.

"GOVERNMENT'S EXHIBIT No. 67."

"*Special Report.*

Washington, D. C., Friday, Oct. 21st, 1927.

"N. Y. Investigator K-27.

Continuing surveillance of Juror #8, Miss H., subject left her apartment at 9:30 A. M., boarding trolley car at 'H' & 14th Street, arriving at Court at 9:50 A. M.

At 12:45 P. M., accompanied by Juror #7, subject came out of the Court House, only to re-enter for a few minutes, when they both came out and lunched at the Court House Coffee Shop at 12:55 P. M.

Both came out at 1:20 P. M. and walked to Castleberg's Jewelry Store at 1004 "F" Street, N. W., where they spoke to the following described man: 45 yrs. 6' heavy set 200 lbs. partly bald, who apparently was the Manager. They entered store about 1:35 P. M. and on leaving stood in doorway discussing oil painting in the window.

They walked to corner of 13th & G Sts., N. W., where Juror # 7 entered Jordans Piano Store, subject going on to office of C. & P. Tel. Co., at 725 13th Street, N. W., entering about 1:55 P. M.

Subject came out at 5:15 P. M., accompanied by the following described girl: 23 yrs. 5' 6" 120 lbs. slender build, dark hair, tan hat, blue coat, light stockings, black shoes trimmed with white leather. Subject was carrying a newspaper and as they left the companion spoke to the following described male: 25 yrs. 5' 9" 170 lbs., dark hair, gray hat, gray overcoat, blue suit, black shoes.

All three walked north on 13th St. to 'I' Street, N. W., where subject left companions and entered Conrad's Delicatessen, purchased a newspaper and entered her apartment thru store.

Subject came out at 6:15 P. M., waiting till 6:30 P. M., when she was joined by the following described female: 25-27 yrs. 5' 6" well built, dark hair, red hat, tan coat. They dined at Picardis', 1414 'H' St., N. W. At 7:00 P. M. they both entered apartment thru Conrad's Delicatessen Store, subject purchasing another newspaper.

I kept a close watch on apartment and as I did not see subject by 11:00 P. M., I discontinued.

147 Expenses $8.40.

Time 1½ days.

150."

"GOVERNMENT'S EXHIBIT No. 66."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"N. Y. Investigator K-27.

Acting under instructions from Manager C. G. R., I proceeded to #80 'L' Street, N. E., accompanied by Philadelphia Investigator S-70, to obtain designation on juror #5—Kidwell, at 6:30 A. M.

At 8:30 A. M. I was shown the Pontiac Sedan license #U-949 as it stopped opposite factory.

As subject was not seen by 9:00 A. M., Philadelphia Investigator S-70 made sure the subject was at work, and giving me detailed description, left to report to manager C. G. R.

At 1:00 P. M., subject with three other men got into the Pontiac and drove off. I followed to 11th & 'G' Streets where I was cut off by traffic.

I then went to subject's home and awaited his return.

Kept his house under close watch, and not seeing subject I discontinued at 12:00 midnight.

Expenses $12.53.

Time 1½ days.

148."

"GOVERNMENT'S EXHIBIT No. 65."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

New York Investigator K-27 Reports:

Continuing surveillance of Juror #5—Kidwell, I proceeded to subject's home at 7:30 A. M. with cab.

At 8:55 A. M., subject came out wearing blue suit and went to Church at 'V' & 13th St., S. E. at 9:00 A. M.

At 10:55 A. M., subject left Church and returned home. I then obtained a cab in order to cover subject, but had to dismiss it on account of possibility of attracting too much attention.

I noticed a Ford Roadster bearing license #O-3318 stop in front of subject's home and a young couple entered.

148 As I did not see subject leave the house, I discontinued operations at 12:00 midnight.

Expenses $14.86.

Time 1½ days.

147."

"GOVERNMENT'S EXHIBIT No. 64."

"*Special Report.*

Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

N. Y. Investigator K-27 Reports:

Continuing surveillance of Juror #5—Kidwell, I proceeded to the Court House at 12:00 Noon.

At 12:45 P. M., subject came out of the Court House and went to the Public Comfort Station at Penna. & 7th, St. N. W. at 12:50 P. M. Coming out of here he stood in small park looking all around and then walked to park corner at 9th & 'B' N. W., where he sat on his haunches, leaning against a tree and ate some sandwiches which he took out of his pocket.

While in park subject kept looking all around and at 1:10 P. M. he walked to 10th St., thru Centre Market to Penna. Ave. to 'D' Street back to Court House grounds, where he spoke to the following described man: Age 55 5' 6" gray hair very stout short stature. Wore light gray hat and suit. Subject entered Court House at 1:25 P. M.

At 3:00 P. M., subject came out and walked to 5th & 'G' Sts. N. W. where he stood on corner looking around and at 3:10 P. M., boarded Brookland trolley riding to N. Capitol

& 'L' Sts. N. W. and walked to #80 'L' Street N. E., entering at about 3:20 P. M.

At 4:55 P. M., subject came out with three other men and entered a Pontiac license #U-1949 and rode to 11th & 'H' Sts., N. W., where subject left the car and boarded an Anacostia trolley, riding to 'U' & Nicholas Ave., S. E., and walked to his home, entering at about 5:35 P. M.

At 7:05 P. M. a Ford Coupe, license #U-3318 drove up to subject's home and a young man got out and entered. It was too dark to get a description.

I did not see subject leave the house. At 10:30 the house was in darkness and I discontinued at 12:00 midnight.

Expenses $10.58.

Time 1½ days.

146."

Thereupon the witness was referred to pages 138 to 144, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 72 to 78, inclusive,
149 which he identified as carbon copies of edited reports of operative K-1, Kirby, from October 19 to October 24, inclusive, the originals of which were sent to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 78."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19th, 1927.

"New York Operating #5023.

Baltimore Investigator K-1 Reports:

Acting under instructions from Manager C. L. V.——

Q. Who is that, C. L. V.? A. Mr. Vietsch.

Mr. Gordon: I see.

(Continuing reading:)

"I proceeded to Washington, D. C., where I met Manager C. G. R., was assigned to the National Hotel and later in-

structed to hold under surveillance Juror #4—Mr. Charles Holt.

Proceeded to the Court House and being unable to get in, I went to subject's home.

As I did not see subject I discontinued at 9:00 P. M.

Expenses $6.74.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 77."

"*Special Report.*

Washington, D. C., Thursday, Oct. 20th, 1927.

"Baltimore Investigator K-1.

Under instructions of Mgr. C. G. R., I proceeded to Court House to get designation on Juror #6—Charles Holt of 1104 4½ St., S. W.

At lunch time subject walked to 'D' & 6th St., purchasing cigar and walked back to Court House.

At 3:05 P. M., left Court House proceeding home."

The Court: Major Gordon, read that address you mentioned there.

Mr. Gordon: 1104 4½ Street.

150 The Court: Southwest?

Mr. Gordon: Yes. Did I read it differently?

The Court: No, I just wanted to know.

Mr. Gordon (continuing reading):

"At 3:05 P. M., left Court House proceeding home. I remained in vicinity and as I did not see subject by 10:00 P. M., I discontinued.

Expenses $6.01.

Time 1½ day."

"GOVERNMENT'S EXHIBIT No. 76."

"*Special Report.*

Washington, D. C., Friday, Oct. 21st, 1927.

"Baltimore Investigator K-1.

Continuing holding Juror #6—Holt—under surveillance, subject left his home at 9:15 A. M., proceeding to the Court House, which he entered at 9:45 A. M.

At noon recess he lunched at 6th & 'D' Sts. with another juror, returning at 1:15 P. M. where he stayed until 3:00 P. M. He then boarded trolley and returned to his home at 3:22 P. M.

I did not see subject leave by 11:00 P. M. so I returned to my hotel and discontinued.

Expenses $5.60.

Time 1½ days."

Thereupon Government's Exhibit No. 1 was handed to the witness and he continued:

When I received this list the numbers of the jurors were already on the list. They were numbered according to the position that the jurors sat, numbered from No. 1, being the first seat on the left-hand side of the lower row of the jury box. The same afternoon that we started the operation, the Washington papers carried pictures of all the jurors. They were cut out and handed to the men to help them make the necessary identification of their particular juror. Where we say No. 1 we mean in this case Kern. No. 2 would be Holmes. No. 3, Costinett. No. 4, Glasscock. No. 5, Kidwell. No. 6, Holt. No. 7, Mrs. 151 Bailey. No. 8, Miss Heaton. No. 9, Grenfell. No. 10, Goucher. No. 11, Herzog. No. 12, Flora. And that was the last man on the top row. If Holt is referred to as No. 4, it was a clerical error, as he was always understood as No. 6. I did have the operatives come down to the court room to get the designation of the jurors. I told them to enter the court as spectators and to walk out and pick up the designation from the outside of the court. By designation I meant to definitely identify their juror, and to do so outside the court and not to start the surveillance

in the court room or in the court building. I wanted them to be sure, from the number and picture that they had, which was the juror that the particular operative was to cover. The number that appears in my reports indicates the particular juror whose name appears opposite that number on my list.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 75."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"New York Operating #5023.
Baltimore Investigator K-1 Reports:

Continuing surveillance on Juror #6, Holt, I proceeded to subject's home. Finding it very difficult to keep the place under watch owing to the neighborhood, I was successful in obtaining a room at 1013 4½ Street where I could cover the house and not arouse any suspicion.

At 10:45 A. M., subject came out and chatted with several neighbors——"

The Court: What was the number of that house? What number was the house where he got the room?

Mr. Gordon: 1013 4½ Street.

The Court: Southwest?

Mr. Gordon: He doesn't say that, but he said he
152 covered the house from that.

The Court: 1013?

Mr. Gordon: Yes, sir, it appearing that Holt's house was 1004. It was apparently diagonally across the street.

The Court: 1004?

Mr. Gordon: 1104.

The Court: 1104.

Mr. Gordon: 1104, yes, sir.

The Court: This house was 1013?

Mr. Gordon: 1013, diagonally across the street. (Continuing reading Exhibit No. 75):

"At 10:45 A. M., subject came out and chatted with several neighbors on the corner, going back into the house at 12:00 Noon.

At 1:15 P. M., he went across the street to watch some carpenters putting in a store front.

At 2:00 P. M., he bought a magazine from the druggist and returned to his house. He came out again at 3:45 P. M., standing around, returning into the house at 5:00 P. M.

I remained on watch till 11:00 P. M., and not having seen subject leave and his house being in darkness, I discontinued.

Expenses $11.75.

Time 1½ day."

"GOVERNMENT'S EXHIBIT No. 74."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"Baltimore Investigator K-1.

Continuing surveillance on Juror #6—Holt, I proceeded to subject's home. Finding it very difficult to keep this place under watch owing to the neighborhood, I was successful in obtaining a room at 1013 4½ Street, where I could cover the house under cover and not arouse any suspicion.

At 10:45 A. M.——"

The Court: Again, Major Gordon, I am not clear about this matter. You said the house No. 1013 4½ Street was diagonally across the street from the juror's residence, 1104 4½ Street. I don't know whether I have any right to consider the general numbering plan that is fol-
153 lowed here, but I should have said that is a block away.

Mr. Gordon: Well, I assume that it is. But I don't know how near one was to one corner or the other was to the other corner.

The Court: 1013 4½ Street is certainly very near a block away, isn't it, from 1104, whatever the street is, 4½ Street?

Mr. Gordon: I don't know how long those blocks are down there, your Honor.

The Court: No, no more do I.

Mr. Gordon: And I will have Kirby on the stand.

The Court: I called your attention to it because you said a few minutes ago that it was diagonally directly across the street.

Mr. Gordon: Well, if I used the word "directly"—

The Court: Well, you said "diagonally," but some of our city squares are four or five hundred feet long, some of them are three hundred feet. An average square in Washington is three hundred feet in length. And I just call your attention to it because you seem to be under the apprehension that this 1013 4½ Street was diagonally across the street from 1104. Well, in a certain sense that is true. You may say that all houses that are squares from one another if they are on opposite sides are diagonally opposite houses. But the question of view, what you can see, how well you can see—there is a considerable difference between three or four hundred feet away across the street diagonally, and fifty feet across the street. Well, go on.

Mr. Gordon (continues reading Government's Exhibit No. 74):

"At 10:45 A. M., subject came out and chatted with several neighbors on the corner, going back into the house at 12:00 noon.

At 1:15 P. M. he went across the street to watch some carpenters putting in store front.

At 2:00 P. M., he bought a magazine from the druggist and returned to his house. He came out again at 3:45 P. M., standing around returning in the house at 5:00 P. M. I remained on watch till 11:00 P. M., and not having seen subject and his house being in darkness, I discontinued."

"GOVERNMENT'S EXHIBIT No. 73."

"*Special Report.*

Washington, D. C., Sunday, Oct. 23rd, 1927.

154 "New York Operating #5023.

Baltimore Investigator K-1 Reports:

Continuing surveillance on Juror #6—Holt, I proceeded to room at 1013 4½ Street, and took up watch.

Subject came out at 9:00 A. M., going in and out of house at different times until 12:50 P. M.

I did not see subject leave the house. At 7:30 P. M., he came to door and lit a cigar.

At 10:00 P. M., the lights went out in the house and I discontinued at 11:00 P. M.

Expenses $7.55.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 72."

"*Special Report.*

Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

Baltimore Investigator K 1 Reports:

Continuing surveillance of Juror #6—Holt, I proceeded to Court House at 12:30 P. M., and at 12:50 subject came out, walked to 5th & 'D,' thence to 'E' and then returned and entered the court at 1:30 P. M.

At 3:10 P. M., subject came out of Court, boarded a trolley and went to his home. I went to the room I had rented and kept strict watch on subject's home.

I saw subject at different intervals up to 7:00 P. M.

At 7:30 P. M., a sedan license #F-176, stopped on 'L' St., and a man entered subject's home. This man was described as follows: about 35 yrs. 5-9' 200 lbs. smooth shaven stout build gray suit light felt hat. He came out at 8:20 P. M.

As I did not see subject again I discontinued at 12:00 M.

Expenses $7.75.

Time 1½ days."

Thereupon the witness was referred to pages 133 to 136, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 79 to 82, inclusive, which

he identified as carbon copies of edited reports of operative H-4, Homighausen, from October 19 to October 22, inclusive, the originals of which were sent to Day.

155 Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 82."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19, 1927.

"Baltimore Investigator H-4.

Acting under instructions from Mgr. C. G. R., I proceeded to the Court House to obtain designation on Juror #3—John J. Costinett of 1442 Fairmount, N. W.

Being unable to pick up subject at Court, I proceeded to his place of business, a tailoring establishment at 1212 New York Ave., N. W.

At 6:05 P. M. two young men left the store with subject and entered olive colored sedan. They drove towards me but turned around in the middle of the block, proceeding westward, so I was unable to obtain license number. Not being able to obtain a cab to follow, I went to subject's home and held it under surveillance until 11:15 P. M.

As subject did not leave during this time, I discontinued.

Expenses $6.19.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 81."

"*Special Report.*

Washington, D. C., Thursday, Oct. 20th, 1927.

"Baltimore Investigator H-4.

Continuing surveillance on Juror #3—John J. Costinett.

Failing to pick up subject at his home, I proceeded to Court.

Subject did not leave Court House at lunch time.

When Court adjourned at 3:15 P. M., subject proceeded to his place of business at 1212 New York Ave. I saw a young man about 6' tall 26 yrs. old med. build thin face light complexion large prominent nose, wore light overcoat and tan shoes, following subject.

When subject entered store this man took up position on N. Y. Ave., just east of 13th Street, remaining there for nearly an hour. About the same time subject entered his store another man arrived and stood at the SE corner of 12th & N. Y. Ave. Description: 55 years iron gray hair heavy built 5' 9" 190 lbs. full face ruddy complexion light brown overcoat gray hat gray suit black shoes. Remained in the vicinity until 5:30 P. M. and before leaving put on shell rimmed glasses.

156 Subject left store 6:10 P. M., going down alley leading into 8th Street. I then proceeded down 13th St. to try to pick up subject. Not seeing him I proceeded to his home. Upon arrival I saw a large sedan License P-1220. Car appears to be same subject had entered the previous evening.

Remained in vicinity until 11:30 P. M.

Expenses $6.37.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 80."

"*Special Report.*

Washington, D. C., Friday, October 21st, 1927.

"Baltimore Investigator H-4.

Continuing surveillance of Juror #3—Costinett—Not seeing subject leave his house by 9:00 A. M., I went to his place of business, but he had left there.

I proceeded to Court House in time to see subject enter at 9:45 A. M.

The Jury being dismissed till Monday, subject went to his place of business after the lunch hour.

The following described man was noticed near subject's place of business: 6' 175 lbs. 28 yrs. med. complexion dark hair large nose smooth shaven. Wore dark blue suit gray

soft hat black shoes. At 2:10 P. M., after circling block several times he left.

At 3:00 P. M. another man described as: 35 yrs. 5' 8" well built thick neck large nose med. complexion hair sandy smooth shaven. Wore light gray suit light gray hat yellow shoes. He remained in vicinity till 5:00 P. M.

At 6:00 P. M., subject left shop and went home. In front of his house was a large sedan, license #P-1219.

At 7:15 P. M., the following described man was seen to loiter near subject's home. 25-27 yrs. 5' 8" 150 lbs. full face dar- complexion smooth shaven dark eyes. Wore a dark blue suit and gray cap. This man seemed very nervous and was constantly turning around.

As I did not see subject leave by 11:30 P. M., I discontinued.

Expenses $5.23.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 79."

"*Special Report.*

Baltimore, Md., Saturday, Oct. 22nd, 1927.

"Baltimore Investigator H-4.

157 Pursuant to instructions from Manager C. G. R., I returned to Baltimore by B. & O. R. R. at 8:15 A. M., discontinuing on the operation.
Expense $1.94.
Time ½ day."

Thereupon the witness was referred to pages 125 to 131, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 83 to 89, inclusive, which he identified as carbon copies of the edited reports of operative D-9, Dwyer, from October 18 to October 24, inclusive, the originals of which were sent to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 89."

"*Special Report.*

Enroute to Washington, D. C.,
Tuesday, Oct. 18th, 1927.

"N. Y. Operating #5023.

N. Y. Investigator D-9.

Acting under instructions from Manager T. A. S., I left the agency at 6:45 P. M. went home and packed bag, preparing to proceed to Washington, D. C. on midnight train and meet Manager C. G. R.

Expenses:

R. R. & Pullman	$11 89
Subway	15
Dinner & tip	1 25
	$13 29

Time 1 day.
131."

"GOVERNMENT'S EXHIBIT No. 88."

"*Special Report.*

Washington, D. C.,
Wednesday, Oct. 19, 1927.

"N. Y. Investigator D-9.

Continuing on the above operation, after receiving instructions from Mgr. C. G. R., to place under surveillance Juror #7—Ammelia D. Bailey of 2700 Conn. Ave.

At 3:00 P. M., subject left Court Room accompanied by Juror #8 and boarded street car at 5th & D Sts. I followed in taxi for several blocks then boarded street car.

158 Subject left trolley in front of her home, a large apartment house, entering about 3:35 P. M.

I remained on watch until 10:30 P. M. but did not see subject leave, so discontinued.

Expenses $8.94.

Time 1½ days.

130."

"GOVERNMENT'S EXHIBIT No. 87."

"*Special Report.*

"Washington, D. C.,
Thursday, Oct. 20th, 1927.

"N. Y. Investigator D-9.

Continuing surveillance of Juror #7—Mrs. Bailey, at 9:05 A. M., she left her home, proceeding to Court House by trolley, arriving there at 9:45 A. M.

At lunch time, she and Juror #8 left Court together, stopping at shoe-shine and repair shop, where Juror #8 had her shoe fixed. Proceeding to Court House Coffee Shop, they lunched together. Neither spoke to any other person during this time."

The Court: Let me interrupt you there. I did not follow what was said about Juror #7 meeting Juror #8. It begins with telling that Juror 7, who is Mrs. Bailey?

Mr. Gordon: Yes.

The Court: And then you went on?

Mr. Gordon: Yes, your Honor. I said that "At lunch time she and Juror No. 8 left Court together stopping at shoe-shine and repair shop, where Juror #8 had her shoe fixed."

The Court: Yes, I understand.

Mr. Gordon (continuing): "Leaving Court at 3:05 P. M. photographs were taken of Jury. Subject and Juror #8 went to Hechts Department Store did some shopping, proceeding to Phillipsborn Dept. Store at 11th near F Street, still shopping. They later proceeded to Brooks Ladies Store.

At 5:06 P. M. left Brooks and entered Stevens Ladies Shop, remaining in there for 20 minutes and then going to Roselin shop. They then walked to 14th & New York Ave., when they separated. The last three stores are located on C near 12th Street.

Subject then boarded trolley and rode to her home, entering at 6:25 P. M.

As subject did not leave the house by 9:50 P. M., I discontinued.

Expenses $7.58.

Carfare 1½ days.

129."

159 "GOVERNMENT'S EXHIBIT No. 86."

"*Special Report.*

"Washington, D. C.,
Friday, Oct. 21st, 1927.

"N. Y. Investigator D-9.

Continuing surveillance on Juror #7—Mrs. B., subject left home at 9:00 A. M. and proceeded to Court House by trolley, arriving at 9:45 A. M.

At 12:50 P. M., subject came out with Juror #8 and conversed with three newspapers photographers. They then entered main entrance of Court House and went to ladies rest room. They then went to Coffee Shop for lunch.

At 12:20 P. M., on leaving Coffee Shop they walked to Castleberg's Jewelry Store at 1004 F St. N. W. On leaving the store they were accompanied as far as the street by a man who talked to them at the door for a few minutes.

Then they walked to 13th & G where they separated, subject entering Jordan Piano Company. In about 10 minutes she came out and boarded trolley at 14th St. and went to her home.

I remained in vicinity but as I saw nothing of subject, I discontinued at 11:00 P. M.

Expenses $9.48.

Time 1½ days.

128."

"GOVERNMENT'S EXHIBIT No. 85."

"*Special Report.*

"Washington, D. C.,
Saturday, Oct. 22nd, 1927.

"N. Y. Investigator D-9.

As per instructions from Manager C. G. R., I remained in my hotel awaiting orders.

At 10:20 A. M., I was told to meet N. Y. Investigator M-20"——

By Mr. Gordon:

Q. You have told us who M-20 was before? A. I have.
Q. Was that Merritt? A. Merritt.

Mr. Gordon (continuing reading): —"in the vicinity of Holmes Bakery at 107 F Street, where I was to obtain a designation on Juror #1—brother, who is also sup-
160 posed to work at this bakery.

At about 11:00 A. M., a man driving a Lincoln Touring bearing license #Q7877, was supposed to be the brother, but this turned out to be an error.

At 8:30 P. M., a man came out that was thought to be the brother and entered Chev. Coupe bearing license #S9859, which I followed accompanied by N. Y. Investigators M-20 & S-81, to 13th & North Carolina Ave. As this did not turn out to be subject we returned to subjects home and saw the subject, an old man and two men arrive in a Hudson Sedan license #G-2462 at 9:10 P. M.

At 10:15 P. M., these people, without the subject, drove off.

At 11:00 P. M., I was instructed to discontinue temporarily, and report for instructions, which I did and returned to my hotel discontinuing at 1:30 A. M.

Expenses $8.17.

Time 1½ days.

127."

"Government's Exhibit No. 84."

"*Special Report.*

"Washington, D. C.,
Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

N. Y. Investigator D-9 Reports:

Continuing on the above operating, I proceeded to vicinity of Juror #1—Kern's home, in company with N. Y. Investigator M-20, in an effort to get designation on subject's brother; arriving at 8:15 A. M.

At 1:10 P. M., Hudson Coach, mentioned in yesterday's report, drove up to Kern's door and subject came out on porch.

At 2:50 P. M., he came out and sat in car for a few minutes, re-entering his home.

At 3:30 P. M. he took his nine year old girl to Home Moving Picture Theatre at C and 13th Street. They left theatre at 5:15 P. M. and joined lady sitting in the Hudson car which was outside the theatre. They drove to their home, and lady went into house for a few minutes. They then drove off and due to traffic conditions we lost them.

Returned to subject's home to take up watch. At about 8:20 P. M., a policeman went to subject's door but could get no response—we left the vicinity until policeman went to Lambs Drug Store.

Returning to the house we saw light on second floor and saw subject preparing for bed. The woman pulled down the shades and put out the light at 10:00 P. M.

161 I discontinued at 11:45 P. M.

Expenses $7.84.

Time 1½days.

126."

"GOVERNMENT'S EXHIBIT No. 83."

"*Special Report.*

"Washington, D. C.,
Monday, Oct. 24th, 1927.

"New York Operating #5023.

N. Y. Investigator D-9 Reports:

Continuing surveillance of Juror #1—Kern, with N. Y. Investigator M-20, in an effort to pick up subject's brother, I proceeded to Court House at noon time.

At 12:55 P. M., subject came out and talked to four other men, one of whom N. Y. Investigator recognized as per his report. Description of this man: 34 yrs. 5' 8" blue suit gray soft hat and appears to have dislocated jaw, for when he talks his mouth draws to one side. This man and the other three entered the Court House after the noon recess.

At 3:01 P. M., subject and Juror #11—Herzog, came out and drove off in Herzog's Ford.

We then proceeded to Holmes Bakery but did not see subject by 6:00 P. M., we went to his home.

At 7:55 P. M., subject came out and drove off in the Hudson, returning at 8:10 P. M.

Not seeing the subject again, we discontinued at 12:00 M.

Expenses $7.81.

Time 1½ days.

125."

Thereupon the witness was referred to pages 117 to 123, inclusive, of the above-mentioned book, marked Government Exhibits for identification 90 to 96, inclusive, which he identified as carbon copies of the edited reports of operative B-4, Brennan, from October 18 to October 24, inclusive, the originals of which were sent to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 96."

"*Special Report.*

162 "Enroute to Washington, D. C.,
Tues., Oct. 18th, 1927.

"N. Y. Investigator B-4.

Pursuant to instructions from Mgr. T. A. S., I went to my home and packed a bag, returning to office was told to proceed to Washington, D. C. and meet Manager C. G. R.

Expenses:

R. R. & Pullman	$11 89
Car fare	15
Supper	1 00
	$13 04

Time 1-day.

123."

"GOVERNMENT'S EXHIBIT No. 95."

"*Special Report.*

"Washington, D. C., Wednesday, Oct. 19, 1927.

"N. Y. Investigator B-4.

Continuing on the above operation, after receiving instructions from Mgr. C. G. R. to place under surveillance

Juror #2, Bradner W. Holmes of 203 'P' St., N. W., I proceeded to Court House and obtained designation on subject.

Subject left Court House and after conversing with other Jurors walked to his place of business—Woodward & Lothrop, 10th & G Sts., N. W.

Leaving there at 6:15 P. M., proceeding to his home. There was a disreputable colored man about 20 yrs. of age who remained in the vicinity for about an hour. There was also a Chev. car parked near subject's home driven by a man who, after subject entered his home, drove car almost in front of subject's house remaining about 15 minutes. It was quite dark but the man appeared to be about 50 yrs. old, wearing glasses.

I remained in vicinity of subject's home until 10:00 P. M., and as he did not leave during evening I discontinued.

Expenses:

Meals	$3 00
Hotel	4 00
Car fare	32
Telephone	15
Tip pullman	50
	$7 97

Time 1½ days.
122."

"GOVERNMENT'S EXHIBIT No. 94."

"*Special Report.*

Washington, D. C., Thursday, Oct. 20, 1927.

163 "N. Y. Investigator B-4.

Continuing surveillance on Juror #2—Bradner W. Holmes—subject left home at 8:30 A. M., going to his place of business, leaving at 9:25 A. M. he proceeded to Court.

At recess he lunched at Court House Coffee Shop.

On leaving Court he returned to his place of business, which he left at 6:10 P. M., when he went home.

As he did not leave by 10:00 P. M., I discontinued.
Expenses $8.42.
Time 1½ days.
121."

"GOVERNMENT'S EXHIBIT No. 93."

"*Special Report.*

"Washington, D. C., Friday, October 21st, 1927.

"N. Y. Investigator B-4.

Continuing surveillance of Juror #2—Holmes—subject went to his place of business. On leaving here he went to Court House entering at 9:40 A. M.

At lunch time he lunched at Coffee Shop. On leaving here he returned to his place of business where he stayed until 6:10 P. M. when he returned to his home.

I remained in the vicinity but did not see subject leave the house, so discontinued at 11:00 P. M.

Expense $8.52.
Time 1½ days.
120."

"GOVERNMENT'S EXHIBIT No. 92."

"*Special Report.*

"Washington, D. C., Saturday, Oct. 22nd, 1927.

"N. Y. Investigator B-4.

Acting under instructions from Manager C. G. R., I accompanied N. Y. Investigator O-3 to help cover Juror #10.

Together we went to subjects house at 6:30 A. M., the subject drove to his place of business in Ford delivery truck bearing license #B-4731.

Acting under instructions from Manager C. G. R., I discontinued and returned to my hotel.

At 5:00 P. M., I was instructed to assist Baltimore Investigator K-1.

164 We kept Juror #6—Holt—under close watch until 9:30 P. M., when I was instructed to return to my hotel as Baltimore Investigator K-1 had the situation under hand.

Temporarily discontinued and returned to my hotel to await instructions.

Expense $13.96.

Time 1½ days.

119."

"GOVERNMENT'S EXHIBIT No. 91."

"*Special Report.*

"Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

N. Y. Investigator B-4 Reports:

Continuing on the above operation, at 9:00 A. M., I awaited orders at my hotel, as per instructions from N. Y. Investigator O-14.

I phoned, at intervals, reporting I was available, but was instructed to stand by.

I discontinued and retired at 11:00 P. M.

Expenses $8.00.

Time 1-day.

118."

"GOVERNMENT'S EXHIBIT No. 90."

"*Special Report.*

"Washington, D. C., Monday, October 24th, 1927.

"New York Operating #5023.

N. Y. Investigator B-4 Reports:

Continuing on the above operation, at 8:30 A. M., I was instructed to conduct an investigation on Josephine Hopkins of 1362 Otis Place, N. W., and hold operator of car, license #U-202, under surveillance the balance of the day.

Subject's husband works at the Patent Office as an examiner.

I then proceeded to subject's home in an effort to locate car. Subject's garage is in rear of house.

At 6:30 P. M. the car arrived and was put in the garage.

At 8:30 P. M., Mr. & Mrs. Hopkins, an elderly couple, came out and walked to 1345 Otis Place, where they sat in living room and visited, returning at 10:00 P. M.

There being no further activity, I discontinued, at 12:00 M.

Expenses $12.08.

Time one day.

117."

165 Thereupon the witness was referred to pages 103 to 115, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 97 to 110, inclusive, which he identified as carbon copies of the edited reports of operative 0-14, Frank J. O'Reilly from October 19 to October 28, inclusive, excepting Exhibit 110, which is an original report of which Exhibit 108 is the carbon, and Exhibit 106, which is an original report of which Exhibit 105 is a carbon, the originals of which, excluding Exhibits 110 and 106, were sent to Day.

Thereupon the witness continued:

The original (longhand) reports of these were sent to Sherman Burns.

Thereupon the following occurred:

Mr. Crim: We object to those that were not sent to Mr. Day, on behalf of Day.

The Court: Just as I ruled yesterday, on objection, I think, from Judge Wright, I will receive these against Sherman Burns; they may not be binding upon Mr. Day.

Mr. Gordon: I understand the question will be determined after all the evidence is in.

The Court: Yes.

Thereupon the witness continued as follows:

No reports were sent to Sherman Burns prior to the 29th of October. When I say the originals were sent to Mr. Burns, I mean the original handwritten reports from which these were made up.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 97."

"Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

166 Continuing on the above operation, at 12:01 A. M. I carried out instructions discontinuing at 2:15 A. M.
Resumed my duties at 8:50 A. M.,—discontinuing at 12:00 M.
Expenses $16.95.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 98."

"Washington, D. C., Saturday, Oct. 22nd, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Continuing on the above operation at 12:01 A. M., I carried out instructions,—discontinuing at 3:00 A. M."

Mr. Crim: What page is that, Major?
Mr. Gordon: 111. (Continuing reading:)

"Resumed my duties at 7:00 A. M. discontinuing at 12:00 M.
Expenses $16.60.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 99."

"Washington, D. C., Friday, Oct. 21st, 1927.

"New York Operating #5023.

New York Investigator 0-14.

Continuing on the above operation at 12:01 A. M., I carried out instructions, discontinuing at 1:20 A. M.
Resumed my duties at 8:00 A. M.,—discontinuing at 12:00 M.
Expenses $26.50.
Time 1½ days."

Thereupon the witness continued as follows:

O'Reilly was my assistant, and his duties were to collect the reports from the various men as they discontinued for the day. It would have taken O'Reilly anywhere from two to three hours after midnight to *to* collect those reports. He had a room at the Mayflower Hotel. He was the contact man between myself and the operators. I believe he was in my apartment once or twice when the client called to see me, but he at no time took part in any discussion that may have taken place between myself and the client. I
167 do not remember whether or not I introduced him to Mr. Day. I believe that I introduced him to Mr. Clark on one occasion.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 100."

"*Special Report.*

"Washington, D. C., Friday, October 21st, 1927.

"New York Operating #5023.

N. Y. Investigator 0-14 Reports:

Acting under instructions from Manager C. G. R., I made an investigation of Charles E. Burr.

He is 25 years old, married and has one child. Lives at 1749 18th Street a three story red brick house owned by his mother-in-law, a Mrs. F. A. Hunt.

Subject is employed by a Cafritz Co., at 1400 'K' Street as a salesman on a commission basis, working there about two months.

Employer said subject had represented five different Real estate concerns in the past year.

Employer knows little about subject, but consider him worthy of being one of their representatives.

Inquiry in subject's neighborhood develops that his mother-in-law stands a large amount of his running expense, as the subject contributes little towards this item.

The general impression is that he lives considerable above his means.

He has Chev. Coach, license #P-993.

Unable to learn anything further, I discontinued.

No Time.

No expense."

Thereupon the witness continued as follows:

I ordered the above investigation. The report of L-36, so-called Long, for October 19th shows that Juror Glasscock was in company with a man driving an automobile, license No. 993. In the investigation we found that Burr was the owner of that car. I did not order an investigation of the suspicious subjects that were in close
168 proximity to Costinett. There was no clear identification; no automobile numbers, with the exception of the one, and we checked that. But the others were just descriptions of men that we were unable to identify in any way. Had we had any identification of them, we would undoubtedly have made an investigation.

Thereupon the Government in evidence the following:

"Government's Exhibit No. 101."

"Washington, D. C., Thursday, Oct. 20th, 1927.

"New York Operating #5923.

New York investigator O-14 Reports:

Continuing on the above operation at 12:01 A. M., I checked in at the Mayflower Hotel.

Proceeded to carry out duties assigned me,—temporarily discontinuing at 2:45 A. M.

Resumed operations at 8:20 A. M. discontinuing at 12:00 M.

Expense $14.85

Time 1½ days."

Thereupon the witness continued as follows:

O'Reilly was performing no duties in the Mayflower Hotel between 12:01 and 2:45 A. M. the morning of the 20th. He was out visiting the men at the different hotels

where they were located, in my company. He arrived from New York and checked in at the Mayflower Hotel at 12:01 A. M. the morning of the 20th. From then on he went on the duties for which he was detailed. They were not in the Mayflower Hotel.

It was decided by the client not merely to keep under surveillance the members of the panel on this occasion, but to also learn all that I could and keep under surveillance those who happened to be in association with the jurors during the course of the trial. That was decided by the client after we got in the reports. If the report read
169 that anybody appeared to be around the juror in a suspicious manner, or the connections seemed to be suspicious, my instructions were to find out who they were.

I remember Government Exhibit 80 which was read this morning. Those two people that acted in a suspicious manner, according to that report, were not looked after because I could not identify them or find them later. The instructions to the man when this report came in undoubtedly were to see whether the same so-called characters appeared in the picture again. Apparently they did not. The client, Day, instructed me to discontinue any surveillance of Costinett after that. Costinett was covered but three days, October 19, 20 and 21, by Homrighausen.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 102."

"Washington, D. C., Wednesday, Oct. 19th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Acting under instructions from Principal W. S. B., at noon time, I prepared to leave town.

Boarded the 4:42 train for Washington, D. C., where I was told to meet manager C. G. R.

Upon arrival I was met by Manager C. G. R., who immediately gave me instructions on the operation—temporarily discontinuing at 12:00 midnight.

Expenses $17.34.

Time 1½-days."

"GOVERNMENT'S EXHIBIT No. 110."

"Washington, D. C., Monday, Oct. 24, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Acting under instructions from Manager C. G. R., I proceeded to make an investigation of Juror #5's brother.

I learned from inquiry his name is Edward Kid-
170 well and that he keeps a Barber Shop at the Myrtle Hotel.

I went to the Myrtle Hotel and found it commonly known as the Myrtle House, and reputed to be a sporting house. It is located quite a distance from the city at Congress Heights.

It is a one man Barber shop and is opened in the morning by a general porter, who awaits owner's arrival. Only on a Saturday or a holiday does he have any other barbers help him.

Among the rubbish thrown out of the shop were quite a number of racing sheets.

Returned to hotel reporting verbally to client."

Thereupon the witness continued as follows:

The above report was apparently not sent to Day, because the original is in the book. That evening I spoke to Mr. Day regarding the contents of that report, but I have no recollection of O'Reilly reporting the matter verbally to the client.

Thereupon the witness was handed a paper which he identified as being in the handwriting of 0-14, O'Reilly, and as being the report of 0-14 for October 24, 1927, the original report of which was sent to Sherman Burns on October 29. Thereupon the paper was marked "Government Exhibit for Identification 111."

Thereupon the following occurred:

Mr. Crim: We object to it, on the ground that it is not shown that Mr. Day ever saw it.

The Court: If I understand the witness, it was sent to Mr. Sherman Burns.

Mr. Gordon: Yes, your Honor.

The Court: The same ruling as before, on the previous objection.

Thereupon an exception was duly noted.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 111."

171 Monday, 10/24/27.

C. G. R. G. J. R.

#014.

N. Y. 5023.

Subject: Brother of Juror #5, Kidwell.

Under instructions received from Mgr. C. G. R. I made an investigation of juror Kidwell's brother.

I went to the residence address as given, after being unable to obtain any information nearby the house, and interviewed some woman who answered the door.

By using a suitable pretext and after quite a lengthy conversation, I obtained the following leads.

The brother of #5 in whom we are interested, is named Edward Kidwell and is the barber maintaining a shop in the Myrtle Hotel on upper Nichols Ave in a section called Congress Heights.

I went to this place some distance from the city proper and made inquiry in this neighborhood among those who could give me a line on this barber without arousing suspicion.

The reputation of the Myrtle Hotel is not so good. This place is called the Myrtle House and commonly called a sporting house.

The subject Edward Kidwell maintains a small space in the basement of this house and has a two chair shop but I learn that he seldom has any other man as a helper.

I entered the shop and by using a suitable pretext I was able to engage the subject in conversation.

The man is 5' 9" and weighs about 200 lbs. is partly bald and has a red mustache and thin reddish hair. Large stomach.

This man in answer to my question as to the owner of the shop said my name is Kidwell, I am the owner.

I left the shop and learned further that someone opens the shop at times in the morning and awaits subjects arrival. Subject remains in the shop and closes same up at 9:45 P. M. or thereabouts each night. I will check this man.

I reported verbally upon my return to Mgr. C. G. R.'s hotel."

"GOVERNMENT'S EXHIBIT No. 109."

"*Special Report.*

"Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

172 Continuing on the above operation, at 12:01 A. M., I proceeded to carry out instructions of Manager C. G. R., discontinuing at 2:00 A. M.

Resumed my duties at 8:00 A. M., discontinuing at 12:00 M.

Expenses $26.70.

Time 1½ days.

108½."

"GOVERNMENT'S EXHIBIT No. 107."

"*Special Report.*

"Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Continuing on the above operation, at 12:01 P. M., I carried out instructions of Manager C. G. R., till 2:20 A. M.

Resumed my duties at 8:00 A. M. till 12:00 midnight.

Expenses $23.00.

Time 1½ days.

107."

"GOVERNMENT'S EXHIBIT NO. 106."

"Special Report.

"Washington, D. C., Wednesday, Oct. 26th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Continuing on the above operation, at 6:30 A. M., I left my hotel and proceeded to the Garage and obtained a car, driving to subject's home."

The Court: Who is the subject?

Mr. Gordon: He does not say here. He says "Continuing on the above operation, at 6:30 A. M.," It will develop in a minute who it is.

"At 9:10 A. M., subject drove to the Raquet Club, leaving at 9:45 A. M., and going to D. of J. Building.

At 1:30 P. M., I gave designation to Manager C. G. R.

At 4:25 P. M., I returned to D. of J. Building and met Manager C. G. R., and we saw subject leave at 4:30 P. M. driving to his home.

At 4:45 P. M. subject left, stopping at a gas station on the 3300 block on Conn. Ave., purchasing 10 gal. of gas and 2 qu-ts of oil.

Subject then drove out in the country, stopping at
173 various times and looking about as tho expecting someone, finally going to Congressional Country Club. I attempted to enter but was stopped by a uniformed door man and asked if I was a member.

I then obtained the aid of N. Y. Investigator M-20 and made a check of cars parked in the grounds, but subject's was not there.

Returning to the city we picked him up near the D. J. Building, where he picked up two women and drove them home (addresses in report of N. Y. Investigator M-20). He then drove home and I watched till 2:20 A. M., discontinuing.

106."

Thereupon the witness continued as follows:

I was with O'Reilly at the Department of Justice Building at 4:30 P. M. but I did not go out to the Country Club with him. I was dropped off near Wardman Park Hotel. Lamb was alone in his car.

Thereupon the following occurred:

Mr. Gordon: It appears that 105 is a carbon of 106, other than at the end on the bottom of 105 there is added "Expenses, $28.91, Time 1½ days."

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 104."

"*Special Report.*

"Washington, D. C., Thursday, Oct. 27th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Continuing surveillance on Lamb, I proceeded to D. of J. Building at 3:00 P. M. and watched till 5:00 P. M. Not seeing subject I phoned his office, using a suitable pretext and learned he had left early in the afternoon.

I then went to his home and watched for subject or his car and as I did not see them by 9:00 P. M., I went to the places where he took the two women last night, but saw nothing of his car.

Returned to his house and watched both the house and the garage till 2:30 A. M., when I discontinued.

Expenses $19.90.
Time 1½ days.
104."

174 "GOVERNMENT'S EXHIBIT No. 103."

"*Special Report.*

"Washington, D. C., Friday, Oct. 28th, 1927.

"New York Operating #5023.

New York Investigator 0-14 Reports:

Continuing surveillance of Lamb, at 3:00 P. M., I proceeded to the D. of J. Building to pick up subject. As he did not come out after waiting the usual time, I proceeded to the vicinity of his home.

At different times during the day I made trips to the office and his home without success. During the evening I stopped at the addresses of the two women he took hom the other night.

Finally at 11:30 P. M., I phoned, using a suitable pretext and learned from his home that subject had left town on Thursday and would not be back till Monday. They were not sure whether he had gone to Richmond or Charlottesville.

I then turned in the car and reported to Manager C. G. R., discontinuing at 12:40 A. M.

Expenses $14.90.

Time 1½ days.

103."

Thereupon the witness continued as follows:

The D. of J. Building referred to in those reports is the Department of Justice Building. The date that Lamb was identified developed in the report of another operative. The Frank J. O'Reilly who signed the affidavit that was presented to the Court is the same Frank J. O'Reilly who reports on this so-called Lamb incident. Exhibit 106, of October 26 is not the first report that was made by me to the client about the Lamb incident. It first appeared in the report of another operative on a previous day. In the report of Long for October 22 he stated that he had seen an automobile bearing license P-1738 following Juror Glasscock, and later in the afternoon he saw the driver of that automobile at the Potomac flying field in conversation

with Juror Glasscock. On Monday I instructed O'Reilly to proceed to the Bureau of Registration to find out the name of the owner, or the name under which the car was
175 registered. We found that it was registered under the name of H. R. Lamb, giving the address as the Ra-quet Club. That same day, under my instructions through O'Reilly, Investigator S-81, Speer, was instructed to learn who H. R. Lamb was. He did so and reported that Lamb was a Special Assistant to the Attorney General, and we found that he lived at 1409 16th Street. The incident was so suspicious that, after talking the matter over with Day, under my instructions O'Reilly picked up Lamb as a subject at his house on the morning of the 26th, and it seemed so important that I personally came downtown and met O'Reilly, who turned his subject over to me. I followed the subject to lunch at the Racquet Club and back to his office. We did not know it was Lamb. We picked him up on the description. I did not make his acquaintance. The report of O'Reilly for the 24th, the day that he went to the Registration Bureau to see who the owner of the particular car was, which later developed to be H. R. Lamb, would not contain those details. Each day O'Reilly, under my direction, would go to the Registration Bureau and look up any cars that had been reported by the men, and his report would simply state that he carried out the duties assigned to him, and, therefore, the looking up of that particular car is not incorporated in a report. On Tuesday, the 25th, there is a report of Steer, S-81, where he learned just who the car belonged to or who Lamb was. I first saw Lamb on the 26th day of October. He compared with the description of the man that had been described in the report as the man in the car with the license number of Lamb's car. Long stated that the subject, which turned out to be Lamb, walked with a peculiar gait, and on that description O'Reilly picked Lamb up at his home at 1409 16th Street on the morning of the 26th. Outside of the dress, the Balmacan coat and the cap, Lamb was
176 dressed in a blue suit and tan shoes. However, he was not shabbily dressed.

Thereupon the witness was referred to pages 92 to 101, inclusive, of the above-mentioned book, marked Government

Exhibits for Identification 112 to 121, inclusive, which he identified as carbon copies of the edited reports of operative X-12, Robbins, from October 18 to October 27, inclusive. With the exception of Exhibit No. 119, report of October 20, Day did not receive any of the typewritten originals. The typewritten originals of the others were sent to Sherman Burns in New York.

Thereupon the witness continued as follows:

There were no handwritten reports made by Robbins. Robbins acted in the capacity of stenographer and my secretary and lived with me at the Wardman Park Hotel.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 121."

"*Special Report.*

Washington, D. C., Tuesday, Oct. 18, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Acting under instructions from Manager C. G. R., I accompanied him to West Philadelphia Station and boarded the 6:50 train for Washington, D. C."

Mr. Crim: What page is that on, Major?

Mr. Gordon: One hundred and one. Exhibit 121. (Continuing reading Government's Exhibit No. 121:)

"Upon arrival I went to Wardman Park Hotel and awaited instructions.

Accompanied Manager C. G. R., to Union Station, phoning the Baltimore Manager to meet Manager C. G. R., at Camden Station, returning to hotel to prepare lists of hotels to assign men in morning.

Discontinuing temporarily at 12:00 midnight.

Expenses:

177	Hotel	$6 00
	R. R. & Pullman	6 03
Taxi		3 60
Meals		2 00
		$17 63

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 120."

"*Special Report.*

Washington, D. C.,
Wednesday, Oct. 19th, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 12:01 A. M., I returned to hotel and made up list of hotels to be used in the morning, showing hotel name, address and phone numbers.

Was given additional instructions by Manager C. G. R., on his return from Baltimore, Md., and discontinued at 4:30 A. M.

At 8:30 A. M., resumed operations, performing duties assigned me by Manager C. G. R., meeting men at station, assigning them to hotels, etc. Made several trips covering Court House and men's hotels.

Discontinuing at 12:00 midnight.

Expenses:

Hotel	$6 00
Meals	3 50
Taxi	16 50
Phones	60
	$26 60

Time 2 days."

"GOVERNMENT'S EXHIBIT No. 119."

"*Special Report.*

Washington, D. C.,
Thursday, October 20, 1927.

"Philadelphia Investigator X-12.

Acting under instructions of Mgr. C. G. R., I proceeded to Court House and obtained a designation on Juror #11—Conrad J. Herzog of 36 New York Ave., N. E.,—working at 920 Bladensburg Rd.

At noon recess subject lunched with Juror #1 at Watts Restaurant 5th & F Street.

After Court adjourned and the pictures of Jury were taken, subject accompanied by Juror #1 entered subject's car and drove off. There being no cab available, I proceeded to subject's home and picked up subject by his car. He went back and forth to his place of business four times from four o'clock to 9:30 P. M. License of Ford Car F 37-39.

178 At 10:00 P. M. subject and a woman from his home went to 9th & D to Hung Low Chinese Restaurant. After eating they returned to their home.

I discontinued at 11:25 P. M.

Expenses $22.50.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 118."

"*Special Report.*

Washington, D. C.,
Friday, Oct. 21st, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 12:01 A. M., I carried out various duties assigned me by Manager C. G. R., temporarily discontinuing at 2:00 A. M.

Resumed operation at 8:30 A. M., performing various duties as well as purchasing supplies to turn out temporary reports for the client.

Discontinued 12:00 midnight.

Expenses:

Hotel	$6 00
Meals	3 50
Laundry	1 00
Taxi	4 20
Supplies	7 90
	$22 60

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 117."

"*Special Report.*

Washington, D. C.,
Saturday, Oct. 22nd, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 12:01 A. M., I performed duties assigned me by Manager C. G. R., discontinuing temporarily at 2:45 A. M.

Resuming operations at 9:00 A. M. carrying out orders, getting out reports and attending to other details.

Discontinued at 12:00 midnight.

Expenses:

Hotel	$6 00
Meals	3 50
	$9 50
Taxi	1 80
	$11 30

Time 1½ days."

179 "GOVERNMENT'S EXHIBIT No. 116."

"Special Report.

Washington, D. C.,
Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 9:00 A. M., I resumed duties assigned me by Manager C. G. R.
Discontinuing at 11:00 P. M.
Expenses $9.50.
Time 1½ days.

Expenses:

Hotel	$6 00
Meals	3 50
	$9 50
Taxi	1 60
	$11 10

"GOVERNMENT'S EXHIBIT No. 115."

"Special Report.

Washington, D. C.,
Monday, Oct. 24th, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 9:00 A. M., I proceeded to carry out my duties as assigned by Manager C. G. R., discontinuing at 12:00 Midnight.

Expenses $12.10.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 114."

"*Special Report.*

Washington, D. C.,
Tuesday, Oct. 25, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation at 9:00 A. M., I carried out the duties assigned me by Manager C. G. R., discontinuing at 12:00 midnight.

Expenses $12.00.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 113."

"*Special Report.*

Washington, D. C.,
Wednesday, Oct. 26th, 1927.

180 "New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above, I resumed my duties at 9:00 A. M., carrying out all instructions, discontinuing at 12:00 M.

Expenses $11.20.

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 112."

"*Special Report.*

Washington, D. C.,
Thursday, October 27th, 1927.

"New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Continuing on the above operation, at 9:00 A. M., I carried out all duties assigned me discontinuing at 12:00 midnight.

Expenses $11.10.

Time 1½ days."

Thereupon the witness was referred to pages 81 to 90, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 122 to 131, inclusive, which he identified as copies of his own personal reports, from October 18 to October 27, inclusive, the original typewritten reports of which were sent to Sherman Burns on October 29th. None of these reports were submitted to Day.

Thereupon the following occurred:

Mr. Crim: The same objection, if your Honor please.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 131."

"*Special Report.*

Washington, D. C.,
Tuesday, Oct. 18th, 1927.

"New York Operating #5023.

Philadelphia Manager C. G. R., reports:

Acting under instructions from Principal W. S. B., I left the Agency accompanied with Asst. Mgr. G. H. R."——

By Mr. Gordon:

Q. That is Robbins? A. Robbins.

Mr. Gordon (continuing reading Government's Exhibit No. 131):

181 "and boarded the 6:50 P. M. train for Washington, D. C., and met client at place designated, who gave me instructions.

Leaving client I checked in at the Wardman Park Hotel and proceeded to carry out client's instructions.

Expenses:

R. R. Fare & Pullman	$6 03
Phila., Taxi	1 30
Meals & Tips	2 10
Hotel	6 00
Taxi hire in Wash	3 60
	$19 03

Time 1 day."

"GOVERNMENT'S EXHIBIT No. 130."

"*Special Report.*

Washington, D. C.,
Wednesday, Oct. 19th, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing operations at 12:01 A. M., I proceeded to Baltimore to arrange details over phone with Principal W. S. B., returning to Washington at 4:30 A. M.

At 8:30 A. M., met Investigators and assigned them to hotels and later gave them instructions.

Interviewed client at 6:15 P. M. Phoned Philadelphia Office. At midnight, still engaged. I phoned Principal.

Expenses:

Hotel	$6 00
Meals	3 60
Balt. & return	2 88
Taxi	3 70
L. D. Phone	6 90
Local phone & tip	1 55
	$24 63

Time 2 days."

"GOVERNMENT'S EXHIBIT No. 129."

"*Special Report.*

Washington, D. C.,
Thursday, Oct. 20th, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above operation at 12:01 A. M., and discontinuing temporarily at 3:00 A. M.

Resumed operations at 8:00 A. M., met investigators and connected with client.

Phoned Philadelphia regarding operation.

182 Issued detailed instructions.

Discontinuing temporarily at 12:00 midnight.

Expenses:

Hotel	$6.00
Meals	4.10
Taxi	4.60
L. D. Phone	4.80
Local Calls	1.20
	$20.70

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 128."

"*Special Report.*

Washington, D. C., Friday, Oct. 21st, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above operation at 12:01 A. M. I supervised work till 2:00 A. M., when I temporarily discontinued.

At 8:20 A. M., resumed supervision of operation.

Attended conference with client during afternoon and at 10:30 P. M.

Phoned Philadelphia Office in connection with operation.

Was actively engaged on operation till 12:00 midnight, when I temporarily discontinued.

Expenses:

Hotel	$6 00
Meals	3 85
Taxi	4 80
Laundry	1 20
L. D. Phone	2 60
Local Phone	1 80
	$20 25

Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 127."

"*Special Report.*

Washington, D. C., Saturday, Oct. 22nd, 1927.

"New York Operating #5023.

Manager C. G. R., Reports:

Continuing on the above operation at 12:01 A. M., I temporarily discontinued at 2:45 A. M.

At 9:00 A. M., I resumed operations and during the day was engaged in conference with client and conducting the investigation till 11:00 P. M.

Phoned Principal W. S. B. at 11:30 A. M.

Expenses:

183	Hotel	$6 00
	Meals	3 85
Taxi		4 20
L. D. Phone		8 30
		$22.35

Time 1-½ days."

"GOVERNMENT'S EXHIBIT No. 126."

"Washington, D. C., Sunday, Oct. 23rd, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above operation, I was engaged from 8:00 A. M. till 12:00 Midnight directing the operation.

Expenses:

Hotel	$6 00
Meals	4 30
Taxi	5 80
	$16 10

Time 1-½ days."

"GOVERNMENT'S EXHIBIT No. 125."

"Washington, D. C., Monday, Oct. 24th, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above, I was engaged from 7:30 A. M., directing operations.

It was necessary to proceed to Philadelphia to proceed with other phases of the case.

I discontinued at 3:30 A. M.

Expenses:

Hotel	$6 00
Meals	4 55
R. R. Fare	12.06
Taxi	6.80
L. D. Phone	2 70
Local Phone	1 40
	$35 51

Time 2 days."

"GOVERNMENT'S EXHIBIT No. 124."

"*Special Report.*

Washington, D. C., Tuesday, Oct. 25th, 1927.

"New York Operating #5023.

Manager C. G. R., Reports:

Continuing on the above operation, I was engaged from 7:30 A. M. till 12:00 midnight directing the operation.

Expenses $22.60.

Time 1½ days."

184 "GOVERNMENT'S EXHIBIT No. 123."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 26th, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above, I was actively engaged directly operation from 7:00 A. M. till 12.00 midnight.
Expenses $19.15.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 122."

"*Special Report.*

Washington, D. C., Thursday, Oct. 27th, 1927.

"New York Operating #5023.

Manager C. G. R. Reports:

Continuing on the above, I was actively engaged in directing operations from 9:00 A. M., till 1:30 A. M.
Expenses $19.80.
Time 1½ days."

Thereupon the witness continued as follows:

In the reports the word "principal" refers to Sherman Burns, and the word "client" refers to Day.

Thereupon the witness was referred to pages 60 to 79, inclusive, of the above-mentioned book, marked Government Exhibits for Identification 132 to 151, inclusive, which he identified as being copies of weekly statements, showing the amount of time and the expenses incurred and the amount of money advanced to the various operatives employed on the operation, the originals of which were furnished to the New York Office, either directly to Sherman Burns, or else to the accounting department.

Thereupon the following occurred:

Mr. Crim: The same objection.

By Mr. Wright:

Q. Were any of them given to Mr. Day? A. No, sir.

The Court: As heretofore made, the same ruling. I
185 understand the witness to say that he sent them either to Mr. Burns or to an accounting official of the agency.

The Witness: The accounting department, your Honor.

Thereupon an exception to the ruling of the Court was duly noted.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 132."

"*Weekly Statement.*

New York Operating #5023.

Manager C. G. Ruddy.

Washington, D. C.

Day	Date.	Time.	Expense.
Friday	10-21-27	1½ days	$20 25
Saturday	10-22-27	1½ days	22 35
Sunday	10-23-27	1½ days	16 10
Monday	10-24-27	1½ days	35 51
Tuesday	10-25-27	1½ days	22 60
Wednesday	10-26-27	1½ days	19 15
Thursday	10-27-27	1½ days	19 90
Totals		10½ days	$155 86

C. G. RUDDY,
Manager.

"GOVERNMENT'S EXHIBIT No. 133."

"Weekly Statement.

New York Operating #5023.

Manager C. G. Ruddy.

Washington, D. C.

Day.	Date.	Time.	Expense.
Tuesday	10-18-27	1 day	$19 03
Wednesday	10-19-27	2 days	24 63
Thursday	10-20-27	1½ days	20 70
Total		4½ days	$64 63
Pink Memos: Phila		10-18-27	$100 00

C. G. RUDDY,
Manager.

186 "GOVERNMENT'S EXHIBIT No. 134."

"Weekly Statement.

"New York Operating #5023.

Philadelphia Investigator X-12.

Washington, D. C.

Day.	Date.	Time.	Expense.
Friday	10-21-27	1½ days	$22 60
Saturday	10-22-27	1½ days	11 30
Sunday	10-23-27	1½ days	11 10
Monday	10-24-27	1½ days	12 10
Tuesday	10-25-27	1½ days	12 00
Wednesday	10-26-27	1½ days	11 20
Thursday	10-27-27	1½ days	11 00
Totals		10½ days	$91 40
Pink Memos		10-24-27	$70 00
		10-25-27	60 00
Total			$130 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 135."

"*Weekly Statement.*

New York Operating #5023.

Philadelphia Investigator X-12 Reports:

Washington, D. C.

Left Philadelphia with $50.00.

Day.	Date.	Time.	Expense.
Tuesday	10-18-27	1 day	$17 63
Wednesday	10-19-27	2 days	26 60
Thursday	10-20-27	1½ days	22 50
Totals		4½ days	$66 73

Pink Memos: None.

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 136."

"*Weekly Statement.*

New York Operating #5023.

New York Investigator O-14.

187 Washington, D. C.

Day.	Date.	Time.	Expense.
Friday	10-21-27	1-½-days	$26 50
Saturday	10-22-27	1-½-days	16 60
Sunday	10-23-27	1-½-days	16 95
Monday	10-24-27	1-½-days	26 70
Tuesday	10-25-27	1-½-days	23 00
Wednesday	10-26-27	1-½-days	28 91
Thursday	10-27-27	1-½-days	19 90
Total		10-½-days	$158 56

Pink Memos:	10-22-27	$30 00
	10-25-27	50 00
	10-27-27	20 00
Total		$100 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 137."

"*Weekly Statement.*"

Washington, D. C.

New York Operating #5023.

New York Investigator 0-14.

Day	Date	Time	Expense
Wednesday	10-19-27	1½ days	$17 34
Thursday	10-20-27	1½ days	14 85
Total		3 days	$32 19

Pink Memos: None.

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 138."

"*Weekly Statement.*

Washington, D. C.

New —— Operating #5023.

New York Investigator B-4.

Left New York with $50.00.

Day	Date	Time	Expense
Tuesday	10-18-27	1 day	$13 04
Wednesday	10-19-27	1½ days	7 97
Thursday	10-27-27	1½ days	8 42
Friday	10-21-27	1½ days	8 52
Saturday	10-22-27	1½ days	13 96
Sunday	10-23-27	1 day	8 00
Monday	10-24-27	1 day	12 08
Total		9 days	$71 99

188	Pink Memos	10-22-27	$25 00
		10-24-27	25 00
		10-25-27	20 00
	Total		$70 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 139."

"Washington, D. C.

New York Operation #5023.

New York Investigator D-9.

Left New York with $50.00.

Day	Date	Time	Expense
Tuesday	10-18-27	1 day	$13.29
Wednesday	10-19-27	1½ days	8.94
Thursday	10-20-27	1½ days	7.58
Friday	10-21-27	1½ days	9.48
Saturday	10-22-27	1½ days	8.17
Sunday	10-23-27	1½ days	7.84
Monday	10-24-27	1½ days	7.81
Total		10 days	$63.11

Pink Memos		10-22-27	$25 00
		10-25-27	50 00
	Total		$75 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 140."

"Washington, D. C.

New York Operating #5023.

Baltimore Investigator H-4.

Day	Date	Time	Expense
Wednesday	10-19-27	1½ days	$6 19
Thursday	10-20-27	1½ days	6 37
Friday	10-21-27	1½ days	5 23
Saturday	10-22-27	½ day	1 94
Total		5½ days	$19 73
Pink Memos		10-18-27	$10 00

C. G. RUDDY,
Manager."

189 "GOVERNMENT'S EXHIBIT No. 141."

"Washington, D. C.

New York Operating #5023.

Baltimore Investigator K-1.

Day	Date	Time	Expense
Wednesday	10-19-27	1½ days	$6 74
Thursday	10-20-27	1½ days	6 01
Friday	10-21-27	1½ days	5 60
Saturday	10-22-27	1½ days	11 75
Sunday	10-23-27	1½ days	7 55
Monday	10-24-27	1½ days	7 75
Total		9 days	$45 40
Pink Memos		10-22-27	$25 00
		10-25-27	10 00
Total			$35 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 142."

"Washington, D. C.

New York Operating #5023.

New York Investigator K-27.

Left New York with $50.00.

Day	Date	Time	Expense
Tuesday	10-18-27	1 day	$13 09
Wednesday	10-19-27	1½ days	8 80
Thursday	10-20-27	1½ days	8 77
Friday	10-21-27	1½ days	8 40
Saturday	10-22-27	1½ days	12 53
Sunday	10-23-27	1½ days	14 86
Monday	10-24-27	1½ days	10 58
Total		10 days	$77 03
Pink Memos		10-24-27	$50 00
		10-25-27	10 00
Total			$60 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 143."

"Washington, D. C.

New York Operating #5023.

Philadelphia Investigator K-37.

199 Day	Date	Time	Expense
Thursday	10-20-27	1 day	$10 38
Friday	10-21-27	1½ days	11 47
Saturday	10-22-27	1½ days	13 28
Sunday	10-23-27	1½ days	10 82
Monday	10-24-27	1½ days	24 32
Total		7 days	$70 27

Pink Memos	10-21-27	$20 00
	10-23-27	15 00
	10-24-27	30 00
Total		$65 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 144."

"*Weekly Statement.*

Washington, D. C.

Philadelphia Investigator L-36.

New York Operating #5023.

Day	Date	Time	Expense
Friday	10-21-27	1½ days	$24 61
Saturday	10-22-27	1½ days	23 70
Sunday	10-23-27	1½ days	28 20
Monday	10-24-27	1½ days	23 40
Tuesday	10-25-27	1½ days	24 84
Wednesday	10-26-27	1½ days	22 92
Thursday	10-27-27	1½ days	25 01
Totals		10½ days	$172 68

Pink Memos	10-22-27	$25 00
	10-24-27	45 00
	10-25-27	40 00
	10-27-27	40 00
Total		$150 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 145."

"*Weekly Statement.*

Washington, D. C.

New York Operating #5023.

Philadelphia Investigator L-38.

191	Day.	Date.	Time.	Expense.
Tuesday		10-18-27	1 day	$9 70
Wednesday		10-19-27	1½ days	11 56
Thursday		10-20-27	1½ days	13 66
Totals			4 days	$34 92

Pink Memos: None.

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 146."

"*Weekly Statement.*

Washington, D. C.

New York Operating #5023.

New York Investigator M-20.

	Day.	Date.	Time.	Expense.
Friday		10-21-27	1½ days	$8 60
Saturday		10-22-27	1½ days	10 52
Sunday		10-23-27	1½ days	10 94
Monday		10-24-27	1½ days	7 96
Tuesday		10-25-27	1½ days	15 11
Wednesday		10-26-27	1½ days	8 87
Thursday		10-27-27	1½ days	8 65
Totals			10½ days	$70 65
Pink Memos			10-24-27	$50 00
			10-25-27	10 00
			10-26-27	20 00
Total				$80 00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 147."

"*Weekly Statement.*

Washington, D. C.

New York Operating #5023.

New York Investigator M-20.

Day	Date	Time	Expense
Wednesday	10-19-27	1 day	$17 52
Thursday	10-20-27	1½ days	8 32

Pink Memos: None.

C. G. RUDDY,
Manager."

192 "GOVERNMENT'S EXHIBIT No. 148."

"Washington, D. C.

New York Operating #5053.

New York Investigator 0-3.

Left New York with $50.00.

Day	Date	Time	Expense
Tuesday	10-18-27	1 day	$13.29
Wednesday	10-19-27	1½ days	9.25
Thursday	10-20-27	1½ days	9.25
Friday	10-21-27	1½ days	11.25
Saturday	10-22-27	1½ days	24.25
Sunday	10-23-27	1½ days	26.80
Monday	10-24-27	1½ days	19.65
Total		10 days	$113.74
Pink Memos		10-22-27	$25.00
		10-24-27	50.00
		10-25-27	40.00
Total			$115.00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 149."

"Washington, D. C.

New York Operating #5023.

Philadelphia Investigator S-70.

Left Philadelphia with $40.00.

Day	Date	Time	Expense
Wednesday	10-19-27	1½ days	$14.20
Thursday	10-20-27	1½ days	8.20
Friday .	10-21-27	1½ days	13.32
Saturday .	10-22-27	½ day	9.39
Saturday .	10-22-27	1 day	7.35
Sunday	10-23-27	1½ days	15.95
Monday	10-24-27	1½ days	14.60
Tuesday .	10-25-27	1 day	18.40
Total		10 days	$102.13
Pink Memos		10-22-27	$25.00
		10-25-27	50.00
Total .			$75.00

C. G. RUDDY,
Manager."

193 "GOVERNMENT'S EXHIBIT No. 150."

"Washington, D. C.

New York Operating #5023.

Philadelphia Investigator S-71.

Day	Date	Time	Expense
Tuesday	10-18-27	1 day	$8.40
Wednesday	10-19-27	1½ days	8.57
Thursday	10-20-27	1½ days	8.83
Friday .	10-21-27	1½ days	9.57
Saturday	10-22-27	1½ days	16.02
Sunday	10-23-27	1½ days	36.31
Monday .	10-24-27	1½ days	14.92
Total .		10 days	$102.62

Pink memos	10-24-27	$50.00
	10-25-27	10.00
Total		$60.00

C. G. RUDDY,
Manager."

"GOVERNMENT'S EXHIBIT No. 151."

"*Weekly Statement.*

"Washington, D. C.

New York Operating #5023.

New York Investigator S-81.

Day	Date	Time	Expense
Friday	10-21-27	1½ days	$17.70
Saturday	10-22-27	1½ days	7.87
Sunday	10-23-27	1 days	8.00
Monday	10-24-21	1½ days	7.97
Tuesday	10-25-27	1½ days	12.30
Wednesday	10-26-27	1½ days	22.77
Thursday	10-27-27	1½ days	19.15
Totals		10 days	$95.76
Pink memos		10-25-27	$15.00
		10-26-27	20.00
		10-26-27	10.00
		10-27-27	20.00
Total			$65.00

C. G. RUDDY,
Manager."

194 Thereupon pages 55 and 56 of the above-mentioned book were marked Government's Exhibits for Identification 152 and 153, and were offered in evidence, to which objection was made and sustained.

Thereupon the witness was handed four papers which he identified as being lists of the operatives employed on the operation and the offices they worked out of, and the hotel that they stayed at, and the prone number of the hotel and as being in the handwriting of Robbins, and which were marked Government's Exhibits for Identification 154 to 157, inclusive.

Thereupon the witness was handed a paper which he identified as being a telegram addressed to Mr. Frank J. O'Reilly and being relative to an automobile tag, and which was marked Government's Exhibit for Identification 158.

Thereupon the witness was handed a paper which he identified as being a telegram addressed to Mr. Frank J. O'Reilly, and which was marked Government's Exhibit for Identifiextion 160.

Thereupon the witness was handed a paper which he identified as being the original report made by O'Reilly, 0-14, for Sunday, October 30th, neither the original nor copy of which was ever sent to anyone, and which was marked Government's Exhibit for Identification 161.

Thereupon Government's Exhibit for Identification 161 was offered in evidence.

Thereupon the following occurred:

Mr. Crim: We object on behalf of Mr. Day.

The Court: Is that the paper Mr. Ruddy testified was received and never sent to anybody, or a copy of it?

Mr. Gordon: Yes, sir.

The Witness: No, I did not. I did not say that no
195 copy was sent. I said if the District Attorney's office was in possession of a typewritten carbon copy of that report, then the original was sent to Mr. Day.

The Court: You mean the original typewritten copy.

The Witness: Yes, sir.

Mr. Gordon: My answer to that was that I had never seen any carbon of such a report.

Mr. Douglas: I understand Mr. Ruddy to say that that paper was found when the raid was made.

The Witness: On my apartment.

Mr. Douglas: On the 31st of October?

The Witness: On the 31st, yes.

Mr. Douglas: So far as we are concerned, while it was never sent to Mr. Sherman Burns, we do not feel like objecting to it under the circumstances, so far as the Burns respondents are concerned, because the inference might be drawn that he would have sent this——

The Court (interposing): He said so. He testified to that.

Mr. Douglas: So I do not think we ought to object under those circumstances.

The Court: I will receive it in evidence as to the Burns respondents here, in view of Mr. Douglas' statement, but I am not to be understood as ruling that it is received in evidence against other respondents.

Mr. Gordon: I understand that.

The Court: If it should develop that it should be admitted as to other respondents, we will deal with that then.

Thereupon the Government introduced in evidence the following:

196 "GOVERNMENT'S EXHIBIT No. 161.

"Government Exhibit 161, dated 10-30-27, "Sunday C. G. R., No. 014, New York 5023, Subject #4. Continuing surveillance on the above subject, I left my hotel at 6:30 A. M. and went to the neighborhood of his home in company with Operator M-20."

The Court: What was the subject?

The Witness: Glasscock.

Mr. Gordon: Glasscock was No. 4?

The Witness: Yes.

Mr. Gordon (reading further): "From this time on we held surveillance of subject until 11 P. M. and returned to the hotel and disc."—I suppose that means discontinued—"at 12:10 midnight.

We used a rented car during the entire surveillance.

Hotel	$5.00
Meals	3.00
Phones	.10
Car Rental	11.80
Gratuities	.30
	$20.30"

Thereupon the witness was handed a paper which he identified as the typewritten original of Government's Exhibit No. 161, a report of O-14 for October 30th, which was never sent to Day and which was marked Government's Exhibit for Identification 161.

Thereupon the following occurred:

Mr. Crim: I object.

Mr. Littleton: I take it your Honor will rule the same as you did with respect to the other. I have not made any other objection.

The Court: To the one immediately preceding?

Mr. Littleton: Yes.

The Court: Yes. I did not hear any objection from Mr. Douglas.

Mr. Douglas: No, sir.

Thereupon the Government introduced in evidence the following:

197 "GOVERNMENT'S EXHIBIT No. 162."

"Special Report.

Washington, D. C., Sunday, Oct. 30th, 1927.

"New York Operating #5023.

"New York Investigator O-14 reports:

Continuing surveillance of Juror #4—Glasscock, I accompanied N. Y. Investigator M-20 at 7.00 a. m. and held subject the entire day, as per N. Y. M-20's Report, discontinuing at 11.00 P. M."

Thereupon the witness was handed a paper which he identified as being a carbon copy of Government's Exhibit No. 162 and which was not sent to Mr. Day, and which was marked "Government's Exhibit No. 163."

Thereupon the Government introduced in evidence the carbon copy of Special Report dated October 30, 1927 and marked "Government's Exhibit No. 163."

Thereupon the witness was handed a paper which he identified as being a carbon copy of the report of operative M-20, Merritt, for October 30th, the original of which was

sent to Day, and which was marked Government's Exhibit for Identification 164.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 164."

"*Special Report.*

Washington, D. C., Sunday, Oct. 30th, 1927.

"New York Operating #5023.
"New York Investigator M-20 Reports:

Continuing surveillance of Juror #4—Glasscock—together with N. Y. Investigator O-14, we proceeded to subject's home at 7.00 A. M., and saw car parked just where we left it the night before.

At 2.20 P. M., subject, an old man, a woman and two children drove to a private house in country at 412 Pine Street, Silver Springs, all entering the house at 3.00
198 P. M. Subject looked at a house, picked some autumn leaves and returned to his home at 5.15 P. M.

At 9.45 P. M. subject walked to a nearby store and got some malted milk.

We remained till 11.00 P. M., discontinuing.

Expenses $9.70.

Time 1½ days."

Thereupon the witness was handed a paper which he identified as being the original handwritten report of operative M-20, Merritt, for October 30th, which was not sent to Sherman Burns, and marked Government's Exhibit for Identification 165.

Thereupon the following occurred.

Mr. Crim: I object, on the same grounds as heretofore stated.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 165."

"#6. CGR.
JJC.
10/31/27.

Washington, D. C., Oct. 30, 1927.

"N. Y. Opt. #5023.
N. Y. Inv. M-20 Reports:

Continuing on the above entitled case I left my room at 7. A. M.

Inv. O-14 drove me to the vicinity of the Subject's home on 8th street N. W. The subject's car was parked near the house in the same position that it was when we left it 6¼ hrs. previously.

We took up surveillance & noted the subject tinkering around his car at 11:30 a.m. After finishing he entered the house.

At 2:20 P. M. the Subject, an old man, a woman and two children got into the car. They rode to a private house in the country #412 Pine Street, and all entered at 3:00 P.M.

Subject look at house picked Autumn leaves left Pine st. at 5:15 P. M. with party & returned home.

At 9:45 P.M. the Subject came out of the house and went to a store at 9th & L St., where he got a malted milk & then returned to his home. The Subject took this trip on foot.

Inv. O-14 & I held surveillance until 11 P.M. We did not see the subject again.

199 Returning to the Hotel I wrote this report and discontinued for the day.

Subsistence	$8.00
Taxi to hotel (11 P.M.)	1.60
Phone	.10
	$9.70

17 hrs. D. E. MERRITT."

Thereupon the witness was handed two papers which were marked Government's Exhibits for Identification 166 and 167. He identified 166 as the hand-written report of

operative S-81, Steer, for October 30th and 167 as the carbon copy of an edited report made from 166, the typewritten original of which was handed to Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 167."

"*Special Report.*

Washington, D. C., Sunday, Oct. 30th, 1927.

"New York Operating #5023.
New York Investigator S-81 Reports:

Continuing on the above operation, at 10:30 A. M., I proceeded to subject's home.

At 11:10 A. M., subject, wife and child drove up to house and entered."

The Court (interposing): Now, who is the subject?

Mr. Gordon: I don't know, your Honor. It doesn't mention it in here, but this is the report. (Continuing reading:)

At 11:10 A. M., subject, wife and child drove up to house and entered.

At 12:45 P. M., subject came out and drove to 'Pettworth,' a development operated by Cafritz Co. During the day the subject spent his time showing people around the houses.

At 6:00 P. M., subject drove home.

At 6:40 P. M., subject returned to 'Pettworth,' remaining until 9:00 P. M., when he drove home, arriving at 9:40 P. M.

I kept house under surveillance till 3:00 A. M.

Expenses $18.63.

Time 1½ days."

200 "GOVERNMENT'S EXHIBIT No. 166."

#7.
JJC. W. S. B.
10/31/27. Sunday, Oct. —, ——.

New York Operation # —.
New York Investigator S-81 reports:

Continuing upon the above mentioned operation, pursuant to the instructions received of Mgr. C. G. R., I left hotel at 10:30 A. M. and proceeded to the vicinity of subject's house on N. W. 18th St.

At 11:10 A. M. I noticed subject come driving down the street with his wife and child in the car. Subject stopped car, and the occupants entered house.

At 12:45 subject came out, entered car, and drove off to a real estate development operated by the Cafritz Company and called "Pettworth."

During the day, the subject spent his time showing people around the different houses.

At 6:00 P. M. subject came over, and entered car and drove back to his home, where he parked car and entered house.

He came out again at 6:40 P. M., entered car and drove off again, returning to the real estate development "Pettworth"—Subject remained around vicinity, and in the office until 9:00 P. M., at which time he entered car, and returned to his home, arriving in at 9:40 P. M.

I remained in the vicinity, holding house under close surveillance until 3:00 A. M., at which time I discontinued and returned car to Hertz station, I then proceeded to hotel, in doing so, incurring an expense of $1.10—

Expenses:	
Incidentals	.50
Car fare	.08
Phone calls	.05
Car rental	8.90
Taxi bill	1.10
Subsistence	8.00
Total Exp.	$18.63

Time, 1½ —.

Thereupon the witness was handed two papers which were marked Government's Exhibits for Identification 169 and 168. He identified 169 as being the carbon copy of the typewritten report of operative S-81 for October 29th, the typewritten original of which was handed to Day and 168 as being a hand-written report of the same operative for the same day, and which was not sent to Sherman
201 Burns.

Thereupon the following occurred:

Mr. Crim: Exhibit 168 is objected to on the same grounds as heretofore.

The Court: The one you do not read——

Mr. Gordon (interposing): Yes, your Honor.

The Court: Which he said was not sent to Mr. Sherman Burns.

Mr. Gordon: Yes, sir.

The Court: But you are reading what you say is the copy, the original typewritten one, which was sent to Mr. Day?

Mr. Gordon: Yes, your Honor.

The Court: The other one, 168, will go in under the same ruling, and the same exception.

Thereupon the Government introduced in evidence the following:

"Government's Exhibit No. 168."

JJC.
#9. W. S. B.
10/31/27. Sat., Oct. —, ——, Washington, D. C.

New York Operating —.
New York Investigator S-81 reports:

Continuing upon the above operation, acting under the instructions received of Mgr. C. G. R., I left hotel at 1:30 P. M. and proceeded to the Hertz station, where I engaged car.

After cruising about between subject's home and office, I finally located him at the Cafritz Company at 14th St. N. W. & K St. N. W.

At 2:30 P. M. he came from the office and entered his car #P 993, drove to his home on 18th St. N. W. Shortly after

arrival at home, subject took a dog out for a walk around the immediate vicinity, after doing which he went back into the house.

At 4:45 P. M. subject, his assumed wife and child, came from the house, entered the car, and drove off north on 16th St. N. W.

202 Subject drove slowly, keeping at about 15 miles an hour, for about a half a mile. On the way out, I noticed a Chevrolet Cabrolet keeping behind subject's car, this car's license number is D.C. R-1340. When they got to a section of the road where traffic was light, both cars stopped and subject and man driving the cabrolet left cars and joined each other, standing behind the cabrolet. They held a conversation for about 10 minutes, smoked a few cigarettes, then entered their cars and drove off. I noticed at this point, that the subject soon distanced the man driving the cabrolet.

Subject drove to a house at #1620 Buchanan Street where he and family, left car, and entered the house.

At 5:20 P. M. they came out, entered car and drove off. They proceeded down town to the shopping district where, after parking car, they walked around visiting several stores.

In about a half hour, they came out, and entered car, and drove off. I lost track of subject's car near Pennsylvania Avenue, due to heavy traffic, and subject's ability to cover more ground with his smaller car, being able to squeeze in where I would be unable to.

I proceeded directly to his home on 18th St. N. W. and parked in the vicinity. In about 10 minutes, subject drove up, and entered house.

Subject came out later in the evening, minus his hat and coat, and walked to a delicatessen store, made several purchases, then returned to his home.

He did not appear again on the street, I could see him sitting down in the front parlor talking to several women.

At 11:50 P. M. the lights in the house were extinguished. I remained in vicinity, holding house under close surveillance until 3:00 A. M. at which time I discontinued as per instructions received—I went back to hotel via cab, incurring an expense of $1.20—S.81.

Expenses:	
Car Fare	.08
Phone Call	.05
Subsistence	8.50
Car Rental	10.12
Cab bill	1.20
Incidentals	.50
Total	$20.45"

"GOVERNMENT'S EXHIBIT No. 169."

"*Special Report.*

"Washington, D. C., Saturday, Oct. 29th, 1927.

"New York Operating #5023.
New York Investigator S-81 Reports:

203 Continuing surveillance of BURR—I left the hotel at 1:30 P. M. engaging a car at the Hertz.

After several trips between subject's home and Cafritz I located him at the office.

At 2:30 P. M., he left the office and drove to his home. Shortly after his arrival he took a *dog* for a walk.

At 4:45 P. M., subject, a woman and child entered the car and drove off. He drove slowly keeping at about 15 miles an hour. I noticed a Chevrolet Cabriolet, license R-1340, trailing the subject. When they had reached a section of the road where the traffic was light, both cars stopped and the man joined the subject in conversation, standing behind the Chevrolet. After talking a while and smoking several cigarettes the subject got back into his car and drove off at a fast pace, soon leaving the Chevrolet behind.

Subject then drove to 1620 Buchanan St., where he and family entered.

At 5:20 P. M., they left and drove down to the shopping district, parking car and visiting several stores. In about a half hour they drove off, I losing them in traffic at Pennsylvania Ave. However, I proceeded to his home and saw them arrive in about 10 minutes.

Subject came out later in evening, without hat or coat and went to delicatessen store. He did not come out again.

and I could see him sitting in the front parlor talking to several women.

I remained on watch till 3:00 A. M., discontinuing.

Expenses $20.45.

Time 1½ days."

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 170, which he identified as being the report of operative O-14, O'Reilly, for October 28, regarding the subject of the ownership of the property 1315 North Carolina Avenue, and which was never reduced to a typewritten report; never given to Day, and the original of which was not sent to Sherman Burns.

Thereupon the witness continued as follows:

I did not communicate to Day verbally about that, nor did Day ever ask me the result of my investigation.

Thereupon the following occurred:

204 Mr. Gordon: I offer this Exhibit 170 in evidence.

Mr. Crim: Objection; the same objection.

Thereupon the witness continued under questioning by Mr. Douglas as follows:

This was not sent to Sherman Burns. The original is right here now. The contents of it were not told to Burns by me before the seizure of the records. It is dated October 28th, and the reports sent to Burns were up until October 27th. I think that I would have sent it to Mr. Burns if there had not been the seizure at the Wardman Park Hotel.

Thereupon Mr. Douglas objected to the introduction in evidence of Government's Exhibit for Identification 170.

Thereupon the witness continued under questioning by the Court as follows:

I testified yesterday that Day had asked me to make a report to him on the responsibility of Juror Kern, but that I had not made the report. The report refers to 1315 North Carolina Avenue, the home of Juror Kern. This paper is a report of the early part of the investigation of the responsibility of Juror Kern. Following Day's instructions, I caused an investigation to be made into Juror Kern's

responsibility. The paper now offered is a result of a part of that investigation. I did not communicate the contents of the report to Day, nor did I send it or communicate its contents to Sherman Burns. It was among the papers seized under the search warrant executed October 31st. This is dated the 28th. I had made edited reports of reports that had been made to me on October 28th, 29th and 30th. I had covered all with the exception of this one. I did not reach this one because of the question in my mind as to whether it did not exceed the instructions that I had received from the agent. Day told me that he was very anxious to find out about Kern's responsibility. I told
Day that the best way to obtain the information as
205 to the responsibility and reliability of Kern was to
make a credit report. That was the logical way to establish it. There are a lot of people well off financially that do not meet their financial obligations. Part of what Day wanted me to find out was whether Kern met his financial obligations. Day didn't make any statement, or mention the word "financial." I have no doubt about what Day wanted to know.

Thereupon the following occurred:

Mr. Littleton: The paper had been offered in evidence, and we are considering the admissibility of it. I desire to make an objection, when the right time comes.

The Court: So far as Mr. Sinclair is concerned?

Mr. Littleton: Yes.

The Court: I think that the paper is admissible, at least as regards respondent Day, in the light of Mr. Ruddy's testimony. And the objection made, if one was made upon Mr. Day's behalf, is overruled.

Mr. Crim: If your Honor please, may I simply make the objection more specific? The objection is that there is no foundation whatever showing that this paper, or the contents of it, were at any time ever conveyed to the knowledge of Mr. Day.

The Court: I understand that it was not communicated to Mr. Day, nor was the substance of it communicated to either of the Burns; that it was a report compiled, and Mr. Ruddy has told us under what circumstances. The objection is overruled. Now, whether hereafter I shall consider

it or not, I am not now admitting this paper as binding upon, or as evidence against any of the respondents at this moment, save Mr. Day. And only then—only as to that paper in view of the testimony of Mr. Ruddy as to how that paper came to be compiled. Its ultimate pro-
206 bative value and the weight to be given it, if you please, even as to Mr. Day, is a matter we will consider later. As a piece of admissible evidence against Mr. Day, I conceive it to be admissible, and the objection made on his behalf is overruled.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 170."

"#11.
JJC. C. G. R.
10/31/27.

Friday, 10/28/27.

#O 14.
N. Y. 5023.
John P. Kern Subject.

Upon instructions received from Mgr. C. G. R. I investigated the ownership of #1315 North Carolina Ave.

I went to the State District Bldg. and first learned that these premises were owned by John P. and Hazel B. Kern.

I was then directed to the Recorder of Deeds Bldg. on 5th St. between D. & C. Sts.

At this building I made a check of the records and went as far back as Jan. 1, 1926, but could find no mortgage having been recorded during that time.

I could find no record of existing mortgage on the property at this time.

Some idea as to when Kern bought the house would be necessary before being able to learn the mortgage on same and its amount.

No release or satisfaction has been recorded on the property since July 1, 1927.

I will attempt to learn the amount of the mortgage and the holder."

Thereupon the witness continued under questioning by the Court as follows:

With reference to some of the documents that have been shown to me, they were taken under the search warrant, and were not sent to Sherman Burns, but they would have been but for their seizure. But that did not relate to this particular report at all, because I had some doubt as to whether it was not exceeding the instructions given by Sher-
207 man Burns. I had not decided in my own mind up to the time of the seizure. I was debating the matter whether looking into the closely connected financial standing and general responsibility of a juror was not exceeding the instructions given by Sherman Burns. I followed the instructions of Day. I had no doubt as to the object that was to be attained in this report. I had no doubt that that inquiry was in harmony with and in obedience to Day's instructions.

Thereupon the witness was handed two papers marked Government's Exhibits for Identification 171 and 172 which he identified as being lists of automobiles that were owned by people other than jurors, in which jurors were riding and which were taken by the operatives when they were holding the jurors under surveillance, and turned into the office and checked at the Bureau of Registration.

Thereupon the witness continued as follows:

The carbon, Exhibit 171, is made up from Exhibit 172. I do not know what became of the original of 172. Very likely the original typewritten copy of 171 was given to Day, but I do not remember. There was no duplicate of 172.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 171."

#12.
JJC.
10/31/27.

"Automobile Information.

Ops.		Date	Juror	License	Remarks
K-27		23	5	U-3318	J. C. Kidwell, 1637 "U." Ford Coupe.
S-71		23	9	N-5757	Mrs. W. L. McDangall, 1221 "F" St. N. W. Hudson Ch.
S-71		23	9	J-140	F. E. Baylis, 921 19th St. Hudson Ch.
K-37		24	11	S-5099	G. C. Clark, 1123 Oates, N. E. Ford Sedan.
K-27		24	5	Q-3318	Mrs. J. M. Jackson, 1739 "M." Whippet.
208	M-20	24	1	Q-7387	Marton Cass, 1315 N. C. Ave. Chev.
L-36		25	4	M-689	Helena Taylor, 516 Randolph St. N. W. Chev. Sedan.
L-36		27	4	M-6748	S. D. Baxter, 4412 Grant Rd. N. E. Ford.
L-36		27	4	H-1874	W. D. Brooks, 1216 34th N. W. Packard.
L-36		28	4	P-2862	C. H. Rodiffer, 49 N. Y. Ave. N. W. Dodge.

22."

"GOVERNMENT'S EXHIBIT No. 172."

"#12.
JJC.
10/31/27.

Automobile Information Wanted.

Reports of Oct. 23, 1927.

Ops.	Date	Juror	License	Description
K-27	23	5	Q-3318	Ford.
S-71	23	9	N-5757	Essex Coach.
S-71	23	9	J-140	Hudson Coach.
K-37	24	11	S-5099	Ford Sedan.
K-27	24	5	Q-3318	Ford Coupe.
M-20	24	1	Q-7387	Small Car.
L-36	25	4	M-689	Chev. Sed.
L-36	27	4	M-6748	?
L-36	27	4	H-1874	Packard
L-36	28	4	P-2862	Dodge

23.

(On reverse side of sheet)

Burning Tree Club

National Capital
Field Trial Club
1315 N. Car. Ave.

District Building
13¢ Prem.
Book #v Plate 28

John P. Kern
Hazel B. Kern
Recorder of Deeds
5 Bvt D & C 1500

S 5099 Gilbert C. Clark,
X
1123 Oates Street, N. E.
Ford Sed.

Q 3318 Mrs. Jessie M. Jackson
1739 M Street
X

Whippet

209 Q 7387 Morton Cross,
1315 N. Car Ave.
X
Chev. Cab.

M 689 Helena Taylor,
516 Randolph St. N. W.
X
Chev. S.

M 6748 Laura D. Baxter,
4412 Grant Rd. N. E.
X
Ford T.

V 3318 Jos. C. Kidwell.
1637 V
X
Ford Coupe
N5757 Mrs. W. L. McDougall
2129 F St. N. W.
X
Hudson Ch.
J 140 Frank E. Baylis,
921 19th St.
X
Hudson Ch.

H 1874 Wm. D. Brooks,
1216 34 St. N. W.
X
Packard S.

. . . . .

P 2862 C. M. Rodeffer,
49 N. Y. Ave.
X
Dodge T.
24."

Thereupon the witness was handed two papers marked Government's Exhibits for Identification 173 and 174, and he identified 174 as being the original report of L-36, the so-called Long, for October 29, 1927, and 173 as being a carbon of the report rendered to Day of the same date by L-36.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 173."

"#13.
JJG.
10/31/27.

"*Special Report.*

Washington, D. C., Saturday, Oct. 29th, 1927.

New York Operating #5023.
Philadelphia Investigator L-36 Reports:

Continuing on surveillance of Juror #4—Glasscock—left the hotel and met N. Y. Investigator M-20 and proceeded to subject's home at 7:00 A. M.

As the car was not parked in front of his home, we proceeded to his place of business and located it.

210 At 11:00 A. M., acting under instructions from Manager C. G. R., I was relieved by N. Y. Investigator O-14, and I returned to Philadelphia, discontinuing at 6:00 P. M.

Expenses $20.48.
Time 1½ days."

"GOVERNMENT'S EXHIBIT No. 174."

"#14.
JJC.
10/31/27.

"*Special Report.*

Washington, D. C., Saturday, October 29th, 1927.

New York Operating No. 5023.
Philadelphia Investigator L-36 Reports:

Continuing on the above operation in company with N. Y. Operation M-20 proceeded to vicinity of subject's home, 1013 Eighth St., N. W., and subject was gone. We then went to his place of employment, 312 S. 13th St., Somerville Nat. Brass Works and located his Oldsmobile car parked on 13½. Continued on watch until 11 A. M. and upon instructions from Mgr. Mr. Ruddy I proceeded to the hotel to see him. He then ordered me to return to Philadelphia and I arrived here at 6 P. M. and discontinued.

Expenses:

Hotel	$5.00
Meals	3.50
Phone	.20
Mileage 24	4.08
Laundry	2.80
Train Fare to Phila.	4.90
	$20.48"

Thereupon the witness was handed papers marked Government's Exhibits for Identification 175 to 182, inclusive, which he identified as being lists of automobiles that were turned in by the operatives in their reports, the ownerships of which were checked at the Bureau of Registration, the originals of which he thinks were handed to Day, but of which he is not certain.

Thereupon the witness continued as follows:

The owner's names were secured from the License Bureau from the car numbers. In some cases something was done about them, as the case of Lamb. There were only one

or two cases that were pursued and reports have been read into the evidence already in the places where they
211 were followed up.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 175."

"#15-A.
JJG.
10/31/27.

Automobile Information Wanted.

Reports of Oct. 23, 1927.

Op. #	Date	Juror	License	Description
K-27	23	5	Q-3318	Ford.
S-71	23	9	N-5757	Essex Coach.
S-71	23	9	J-140	Hudson Coach.

27."

"GOVERNMENT'S EXHIBIT No. 176."

"#15-B.
JJG.
10/31/27.

Automobile Information.

Op. #	Date	Juror	License	Owners Name & Address
H-4	21	3	P-1219	J. R. Forney, 1436 Fairmount. Chrysler Rdstr.
K-37	21	11	X-2102	Service Tag.
L-36	21	4	Q-5818	Norman L. Glasscock.
S-70	21	1	U-1949	Chas. F. Renwick, 421 9th St. Pontiac.
M-20	22	1	G-2462	John P. Kern, 1315 N. C. Ave. Hudson.
M-20	22	1	Q-7877	Chas. Inscoe, 912 Maryland. Lincoln.
B-4	22	10	B-4731	W. S. Kenworthy, 310 N. Brook Ct. Ford Del.
K-37	22	11	T-70204	Va. Wired for information. Ford.

L-36	22	4	U-202@	Josephine E. Hopkins, 1362 Otis Pl. Chev. Coach.
L-36	22	4	P-1738@	H. R. Lamb, 1135 16th St. Oakland Rdstr.
O-3	22	10	J-4376	Alberta Walker, 1419 'R' St. N. W. Dodge Sedan.
B-4	19	2	B-9057	Charles Grant, 3500 14th St. N. W. Ford.

@—Hopkins covered by N. Y. Investigator B-4 Monday.
@—Lamb covered by N. Y. Investigator S-81 Monday.

New Numbers Appearing Today.

K-27	23	5	Q-3318	Essex.
S-71	23	9	N-5757	Essex Coach.
S-71	23	9	J-140	Hudson Coach.

28."

212 "GOVERNMENT'S EXHIBIT No. 177."

"#15-C. 2743.
JJC.
10/31/27.

Automobile Information Wanted.

Op. #	Date	Juror	License	Description of car
H-4	21	#3	P-1219	Large Sedan.
K-37	21	11	X-2102	Buick Sedan.
L-36	21	4	Q-5818	Oldsmobile.
S-70	21	1	U-1949	Pontiac.
M-20	22	1	G-2462	Hudson Sedan.
M-20	22	1	Q-7877	Lincoln Touring.
B-4	22	10	B-4731	Ford Delivery.
K-37	22	11	T-70204 Va.	Ford Sedan.
L-36	22	4	P-1738	Chev. Coupe.
O-3	22	10	J-4376	Oakland Roadster.
K-37	22	5	U-1949	Dodge Sedan.
B-4	(early) (19)	2	B-9057	Pontiac (Same as S-70 21st). Chev.

29 2743½

P 1738 H. R. Lamb 1135 16th St. Oakland Rdster (Steer).

Q 7877 Chas. E. Inscoe 912 Maryland Ave. Lin. Touring.

U 202 Josephine E. Hopkins 1362 Otis Pl. Chev. Coach (Tom Brannan).

B 4731 W. S. Kenworthy 310 North Brook Court Ford.

P 1219 J. Raymond Forney 1436 Fairmount Chrysler Rdster.

J 4376 Alberta Walker 1914 R St. N. W. Dodge Sedan.

X 2102 Service Tag No the high.

T 70204 Va. Western Union.

5818 Norman L. Glasscock, 1013 8th St. Oldsmobile Tg.

B 9057 Chas. Grant 3500 14th St N. W. Ford.

U 1949 Chas. F. Renwick 421 9th St. S. E. Pontiac.

U 1949 A repeat.

G 2462 John P. Kern 1315 N. Car. Ave. Hudson Sedan.

30."

"GOVERNMENT'S EXHIBIT No. 178."

"#15-D.

JJC. 2744.

10/31/27.

Automobile Information Wanted.

Op. #	Date	Juror	License	Description of car
H-4	21	#3	P-1219	Large Sedan.
K-37	21	11	X-2102	Buick Sedan.
L-36	21	4	Q-5818	Oldsmobile.
S-70	21	1	U-1-949	Pontiac.
M-20	22	1	G-2462	Hudson Sedan.
M-20	22	1	Q-7877	Lincoln Touring.
B-4	22	10	B-4731	Ford Delivery.
K-37	22	11	T-70204 Va.	Ford Sedan.
L-36	22	4	U-202	Chev. Coupe.
L-36	22	4	P-1738	Oakland Roadster.
O-3	22	10	J-4376	Dodge Sedan.
K-27	22	5	U-1-949	Pontiac (Same as S-70 21st).
B-4	(Early)	2	B-9057	Chev.

31."

213 "GOVERNMENT'S EXHIBIT No. 179."

"#15-E.
JJC. 2745.
10/31/27.

Automobile Licenses from Saturday's Reports, Oct. 22, 1927.

Op. #	License	Description of car
M-20	G-2462	Hudson Coach.
M-20	Q-7877	Lincoln Touring.
B-4	B-4731	Ford Delivery.
K-37	T-70204 Va.	Ford Sedan.
L-36	U-202	Chev. Coupe.
L-36	P-1738	Oakland Rdstr.
O-3	J-4376	Dodge Sedan.
K-27	U-1-949	Pontiac Sedan.

32."

"GOVERNMENT'S EXHIBIT No. 180."

"#15-F.
JJC. 2746-47.
10/31/27.

Automobile Information.

Op. #	Date	Junior	License	Owner's Name & Address
B-4	19	#2	Q 9524	Jos. Debole 4422 Georgia Report shows Chev. Records show Dodge Tour.
X-12	20	#11	F-3739	Northeast Motor Co. Subject's own Company.
B-4	20	#3	P-1220	J. R. Forney 1436 Fairmount Report calls for large Sedan Records show Chrys Rdstr.
L-36	20	#4	Q-5718	Homer Powel 1233 37th St. N. W. Report shows Oldsmobile Record calls for Ford Tour.

M-20	20	#10	K-7521	American Ice Co., 1320 'F' St. Report shows Coupe Records calls for Ford Cpe.
S-70	20	#9	M-2092	C. M. Redford 2831 28th St. NW. Report shows Ford Rdstr. Record shows Ford Tour.
M-20	21	#10	N-5259	Mrs. J. E. Vogts 1411 N. C. Ave. Report does not show make Record shows Essex Coach.
H-4	21	#3	P-1219	Report shows large sedan Records
K-37	21	#11	X-2102	Report shows Buick sedan Records
L-36	21	#4	Q-5818	*Records* show Oldsmobile Records
S-70	21	#1	U-1949	Report shows Pontiac Records

B-9057—B-4.
33."

214 "GOVERNMENT'S EXHIBIT NO. 181."

"15 G.
JJC.
10-31-27. Courtland 4150.

(On letterhead of Wardman Park Hotel appears the following:)

O-9524 (B4) 19
F-37-39 X-12-20
P-1220-H-4-20
Q-5718-L-36-20
K-7521-M-20-20
M-2092-S-70-20

H-949-S-70-21
N-5259-N-20-21

P-1219-H-4-21
X-2102-K-37-21

Q-5818-L-36-21
U-1-949-S. 70-21

B-9057-B-4- (?)
G-2462-M-20-22-Hudson Coach
Q-7877-M-20-22-Lincoln
B-4731-B-4-22-Ford Del.
T-70204-Va.-K-37-22 Ford Sedan.
U-202-D. C.-L-36-22-Chev. Coupe
P-1738-L-36-22-Oak Rdstr.
J-4376-O-3-22-Dodge Sed.
34."

"GOVERNMENT'S EXHIBIT No. 182."

"15 H.
JJC. 2749.
10/31/27.
D

M 2692 Ford Tou-ng
C. M. Redford
2831 28th St. N. W.

Q 9524 ? Not O
Dodge Tour-ng
Joseph Delsole
4422 Ga. Ave.

H 949
Chev Coach
U-1-949 A. D. Moore
61 M St. S. W.

N 5259
Essex Ch
Mrs. Jas. E. Vogts
1411 N. C. Ave.

35.

2749½.

The Mayflower,
Washington, D. C.

F 3739 Ford Sedan
Northeast Mot. Co.
920 Blad. Road.

P 1220
Chrysler Rdster
215 J. Raymond Forney
1436 Fairmount St.
Q 5718 Ford Touring
Homer Powell
1233 37th St. N. W.
K 7521
Ford Coupe
American Ice Co.
1320 F St.
36."

Thereupon the witness was handed two papers marked Government's Exhibits for Identification 183 and 184 and he identified Exhibit 184 as being the handwritten report of operative M-20, Merritt, for October 29, which he retained in his files, and Exhibit 183 as being the carbon copy of the typewritten report by the same operative for the same day that was sent to Day.

Thereupon the following occurred:

Mr. Crim: We object, your Honor, to 175 to 182 on the ground that there is no evidence that they were ever brought to Mr. Day's attention.

The Court: 175 to 182, inclusive?

Mr. Crim: Yes.

The Court: My recollection of Mr. Ruddy's testimony thus far is that among his instructions from Mr. Day was to get the automobile numbers, the license numbers of the cars.

Mr. Gordon: Yes, your Honor.

The Court: The objection is overruled.

Mr. Crim: Exception.

Thereupon Mr. Gordon explained to the Court that the initials "J. J. C." which appear on some of the reports are the initials of J. J. Clarkson, the Deputy Marshall who received and identified the reports.

Thereupon the Government introduced in evidence
216 the following:

"GOVERNMENT'S EXHIBIT No. 183."

"*Special Report.*

Washington, D. C., Saturday, Oct. 29th, 1927.

"New York Operating #5023.

New York Investigator M-20 Reports:

Continuing surveillance of Juror #4—Glassrock—at 7:00 A. M. I met Philadelphia Investigator I-36, together we proceeded to vicinity of subject's home. The car was not outside of his home—so we located same at his place of business.

In reporting to Manager C. G. R., I passed Juror #1 in a new car, license #U-4595, driven by a stranger to me.

Philadelphia Investigator I-36 was relieved by New York Investigator O-14 and we returned to subject's place of business.

At 4:00 P. M., came out and drove home. At 6:00 P. M., a lady with child in arms and a man entered subject's house.

At 6:50 P. M. subject went to door as these people left and later entered his car driving to the new gas station at 6th & N. Y. Ave., when they were given a gallon of oil with 5 gal. of gas. Subject waited in line till 7:40 P. M. before he arrived at the pumps—returning to his home at 7:50 P. M.

We held surveillance till 1:30 A. M., discontinuing.

Expenses $11.68.

Time 1½ days."

Thereupon the following occurred:

Mr. Crim: Your Honor, I object to 184 on the ground heretofore stated that it did not come to the attention of Mr. Day.

The Court: It may stand. What is the character of the document, Major?

Mr. Gordon: It is one of the original handwritten ones, that none of them had ever been sent to Mr. Day.

The Court: A report made by the operative?

Mr. Gordon: Yes, your Honor.

The Court: That came into Mr. Ruddy's hands?

Mr. Gordon: Yes.

The Court: But no copy of that sent?

217 Mr. Gordon: No, the report that I have just read was made up from that, as he testified, and this is the original which they had been in the practice of sending to Sherman Burns, but this one was not sent.

The Court: What you are proposing to read——

Mr. Gordon (interposing): 184.

The Court (continuing): —is the operative's report?

Mr. Gordon: Original report.

The Court: That was made the basis of this report?

Mr. Gordon: Yes, your Honor.

The Court: The copy of which was sent to Mr. Day?

Mr. Gordon: Yes, your Honor.

The Court: All right, overruled.

Mr. Crim: Exception.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 184."

#17.
JJC.
10/31/27. C. G. R.

Washington, D. C., Oct. 29, 1927.

N. Y. Opr. #5023.

N. Y. Inv. M 20 Reports:

Continuing on this matter I left my quarters at 7 a. m. & meeting Phila. Inv. 36 with Auto we proceeded to the vicinity of the home of #4.

The car was not outside the house so we proceeded to his business address. We located the car parked on 13½ Street. (Rear of 312 13th St. N. W.)

At 11 a. m. I reported to Mgr. C. G. R. & on my return to the last address while crossing G & 13th St., I observed #1 in a new car #U 4595 Dist. Col. 1927 a stranger was at the wheel.

N. Y. Inv. 014 joined me with Auto & we covered #4's car. At 4 P. M. the subject got into his car & drove to his home.

At 6 P. M. a lady with a child in arms & a man entered the subject's house.

At 6 p. m. the subject came out of the house with
218 these people talk- a word & they departed."

Mr. Brandenburg: Is that 6 or 6:50, Major?

Mr. Gordon: 6:50. (Continuing reading Government's Exhibit 184:)

"The subject then got into his car. He got into a line of autos that led to a new gasoline station at 6th & N. Y. Ave. where with a 5 gallon purchase of gas a one gallon can of oil was given free.

It was 7:40 P. M. before the subject's car reached the pumps & he made his buy. He returned to his home at 7:50 P. M.

Inv. O14 & I held surveillance until 1:15 a. m. & as the car did not move we returned to the Hotel & discontinued at 1:45 a. m.

At about 5 P. M. today the subject cleaned his car.

My laundry bill today amounted to $2.40.

Subsistence	$8 00
Phones	20
Carfare	08
Laundry	2 40
Incidentals	1 00
	$11 68

M 20.
19 hours.

D. E. MERRITT."

Thereupon the witness was handed two papers marked Government's Exhibits for Identification 185 and 186 and he identified 186 as the handwritten report of operative O-14, O'Reilly, for October 29th when Glasscock was the subject, and 185 as a carbon copy of the typewritten report of the same operative for the same day, the original of which was sent to Mr. Day.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 185."

"*Special Report.*

Washington, D. C.,
Saturday, Oct. 29th, 1927.

New York Operating #5023.

New York Investigator O-14 Reports:

Continuing on the above operation, I carried out instructions of Manager C. G. R. till 11:00 A. M. Later I
219 was assigned to work with New York Investigator M-20 in covering Juror #4 Glasscock,—which I held thru out the day and night, as per report of New York Investigator M-20.

Discontinuing at 1:30 A. M.

Expenses $25.47.

Time 1½ days."

Thereupon the following occurred:

Mr. Crim: Your Honor, I make the same objection as heretofore made to Government 186.

The Court: What is that exhibit?

Mr. Gordon: That is a longhand report, your Honor.

The Court: The report of the operative from which the report you have just indicated was made up?

Mr. Gordon: Yes, your Honor.

The Court: The objection is overruled.

Mr. Crim: We desire to note an exception.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 186."

#19. C. Z. R.
JJC.
10/31/27.
#014. Saturday, 10-29-27.

Working under instructions from Mgr. C. Z. R. I met operator M 20 at 11 a. m. and started the above operation.

In company with operator M 20 I held surveillance of

Juror #4 through the entire day and night until 1.20 a. m. 10/30 at which time I disc.

M 20's report gives subject's movements in detail.

Hotel	$5 00
Meals	3 00
Taxi	1 20
Car Hires	12 60
Phones	20
Taxi	1 05
Gratuities	55
Laundry	1 87
	$25 47

Time —."

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 187, which he identified as being the longhand report of operative L-36, Long, for October 28, 1927, and the typewritten report made from this report was sent to Mr. Day.

220

Thereupon the following occurred:

Mr. Douglas: That is not one of the reports that went to Mr. Sherman Burns?

The Witness: No, Mr. Burns never received any copy of that report.

Mr. Douglas: Either one of the Burns, W. J or Sherman Burns?

The Witness: Neither.

Mr. Douglas: And of course Mr. Vietsch did not receive it?

The Witness: No, Mr. Vietsch never saw any of the reports.

Mr. Douglas: May it please your Honor, I would like to make a general reservation as to this evidence which is offered, that is whenever it appears that it was not called to the attention of either one of the three defendants, that we object to it. I do not know how important it may be at a later stage of the case and I would like to reserve the general objection rather than to be repeating an objection every time one is offered, in order to save the time of the Court.

The Court: Of course, there has been a number of reports which have gone in, which Mr. Ruddy has testified did not go to Mr. Burns but did go to Mr. Day, and I do not recall that there was objection noted, except once or twice.

Mr. Douglas: I will be content if your Honor will sustain the objection to this one and those that may come in hereafter.

221 The Court: Undoubtedly, but let me say frankly to you, Mr. Douglas, and to other counsel in the case, this: Mr. Ruddy has testified in this case that after receiving his instructions from Mr. Sherman Burns to come to Washington he was at once to report to Mr. Day and that from Mr. Day he did receive his instructions of what he was to do, and his testimony then proceeded along that line, along the line of revealing what was done by the operatives under his direction and supervision, what reports were made by him, what reports were sent or handed to Mr. Day, or what reports were sent or handed to Mr. Burns; so that we have, according to Mr. Ruddy's testimony thus far, Mr. Burns in effect telling him to take his instructions from Mr. Day, and that he took them from Mr. Day and acted accordingly.

Mr. Douglas: Of course I do not know that Mr. Ruddy went quite so far as your Honor has understood him to go.

The Court: If you have any doubt about it the record is available. I went over it a few moments ago again. I think I may say that to you in simple candor in order that you may know in outline the basis for my ruling, and your objection is overruled.

Mr. Douglas: Will your Honor permit me, just for the purpose of explaining my own position in the matter, to say that whatever instructions he got from Mr. Day will, of necessity, have to be subject to the general instructions that the head of the agency gave him.

The Court: That may be a matter for consideration later. The objection is overruled.

Mr. Douglas: I desire to note an exception.

Mr. Crim: I object to 187 on the ground that there is no evidence that Mr. Day ever saw it or that it ever came to his attention.

222 The Court: The objection is overruled.

Mr. Crim: I desire to note an exception.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 187."

"*Special Report.*

Washington, D. C., Friday, Oct. 28th, 1927.

#22.
JJC.
10/31/27.

"N. Y. Operative 5023.

Phila. Investigator L-36 Reports:

Continuing on the above operation pursuant to instructions from Mgr. C. G. Ruddy I proceeded to vicinity of the Court House at 2.15 p. m. and met N. Y. Investigator M-20. At 3 p. m. subject came out of court house and proceeded to his car which was parked at 3rd and D St. and drove said car to Eleventh St., N. E. and entered home at 129-131 Eleventh St. N. E. at 3.35 P. M. This is a four story brick dwelling and he came out at 5 p. m. and entered his car. The subject then drove to 49 New York Ave. N. W. and look- automobile over thoroughly that was parked in front of his car.

This car had Dist. of Col. registration P-2862. The subject then entered the house at 49 New York Ave. at 5.15 P. M. and came out at 5.50 P. M. and drove his car to his house at 1013 Eighth St., N. W.

Subject and his wife came out at 7 p. m. and entered his car and drove away. Owing to traffic conditions at 9th & Penna. Ave. we lost sight of subjects car and returned to vicinity of his home at 7.30 P. M. after cruising around their vicinity of Penna. Ave.

Subject and wife returned home at 9 P. M. and entered his home.

I noticed all lights were extinguished after 9.20 P. M. and I remained on watch in vicinity until midnight and returned to hotel at 1.30 a. m. and discontinued for the day.

L-36.

Expenses:

Room	5 00
Meals	3 50
Telephone	40
Auto mileage 32 miles	5 44
	$14.34
Dist. of Col. License plates	1 00
Operators License	3 00
	$18 34

223 Thereupon the witness was handed a paper marked Government's Exhibit for Identification 188 which he identified as being the original report of operative M-20, Merritt, for October 28th, from which a typewritten report was made and sent to Mr. Day.

Thereupon the following occurred:

Mr. Gordon: I offer this in evidence.
Mr. Crim: We made the same objection.
The Court: The same ruling.
Mr. Crim: We desire to note an exception.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 188."

Wardman Park Hotel.

"#24-a.
JJC. C. G. R.
10/31/27.

Washington, D. C., Oct. 28, 1927.

N. Y. Opt. #5023.

N. Y. Inv. M 20 Reports:

Continuing on this matter I reported to Manager C. G. R. at 12 o'clock noon and after a conference I proceeded down town & purchased a camera for which I was taxed $13.00 including films.

This camera is to be used on this operation.

At 2.30 P. M. I met Phila. Inv. L-36 with auto.

At about 3.10 p. m. subject #4 left the court house and walked to his Auto G-5818 Dist. Col. 1927.

The subject drove to 11th St. N. W. where he entered #129-131.

(44.)

This is a four story brick building, a business may be carried out here. He entered at 3.25 P. M. and came out at 5 P. M.

The subject then drove to a house #49 N. Y. Ave. N. W. where he entered at 5.15 P. M.

This may be a furnished room house.

An auto outside the house #P2862 Dist. Col. 1927 was scrutinized by the subject.

224 At 5.50 P. M. the subject left the last address and drove to his home #1013 8th St. N. W.

It was about 7 P. M. when the subject and a lady got into the car and drove away. We followed but were caught in traffic at 9th & the Avenue & the subject got away.

We cruised around a little, but could not locate the car, so we returned to 8th St.

(45.)

At 9 P. M. the subject returned.

As we did not see the subject again up to midnight we left the neighborhood.

I reported to Mgr. C. G. R. at 12.30 a. m. & discontinued for the day.

I did not observe any one else following this subject today.

13 hrs. M 20.

Subsistence	$8 50
Carfares	16
Incidentals	40
Camera & films	13 00
	$22 06

Thereupon the following occurred:

Mr. Wright: With respect to Government Exhibit 188, this very paper was not submitted to Mr. Day, the manuscript report which Mr. Douglass now has, was it, Mr. Ruddy?

The Witness: No, in no case was the original of that report sent to Mr. Day.

Mr. Wright: But I am talking about this paper; whether or not this very paper, I said——

The Witness (interposing): No, my answer would be no.

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 189, which he identified as being the handwritten report of operative S-81, Steers, for October 28th, when Burr was the subject, from which a typewritten report was made and sent to Day.

Thereupon the following occurred:

Mr. Wright: I asked you whether that was an exact copy of this paper which was sent to Mr. Day. It was not, was it?

225 The Witness: No, it was not an exact copy.

Mr. Gordon: I offer Exhibit 189 in evidence, your Honor.

Mr. Crim: I desire to make the same exception.

The Court: The same ruling.

Mr. Crim: I desire to note an exception.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 189."

"#23.

JJC. W. S. B. Burr.

10/31/27.

Washington, D. C., Fri., Oct. 28.

New York Operating #—.

New York Investigator S 81 Reports:

Continuing upon the above operation, pursuant to the instructions received of Mgr. C. G. R. I left hotel at 1:30 P. M. and proceeded to the Hertz station, where I engaged car.

I then went to vicinity of the Cafritz Co. on 14th St. N. W. & K St. N. W. but did not see subject's car. After making several trips between subject's house, and his place of business, I noticed his car parked on K St., N. W. near 14th St. N. W.

At 4:30 P. M. subject entered car, and drove to H St., N. W. where he stopped, and went into the Walter Brown Real Estate Co. #1400 H St. N. W. coming out in 10 minutes and driving to the De Luxe Pool Parlor at #812 H St. N. E. where he entered.

Subject came from here at 5:25 P. M. entered car and drove to his home, where he parked car, and

(50.)

entered his home.

At 7:50 P. M. he came out accompanied by two women, one of them was elderly, and the other one seemed to be fairly young about 27 yrs. old, because of the darkness, I was unable to obtain a more detailed description.

Subject drove down-town, to the front of the B. F. Keith's Theatre on 15th St. N. W. & G St. where the two women left the car, and walked towards the lobby, while the subject continued on in the car.

Subject drove on down to the Post Office near the Union Station, where he parked car, then walked into the P. O. and up to the General Delivery window where he made an inquiry, then *then* came out side and entered

(49.)

226 car. He sat inside for 15 minutes waiting, then drove off to Pennsylvania Avenue and to the intersection of 14th St. N. W.

At this intersection, I lost him in a traffic jam, when I was held up, due to a woman driver who had locked bumpers with the car ahead of her. I then went back and looked over all cars in the vicinity of the Keith Theatre, but failed to locate his car. I remained around the vicinity until 11:00 P. M. in case he came back to pick up the two women at the theatre. He did not, however appear up till this time.

I then proceeded up to his house on 18th St. N. W., where upon arrival, I observed lights in subject's house, which had been extinguished, a few minutes before subject and the two women left house earlier in the evening.

I remained in vicinity of house, holding same

(47.)

under close surveillance until 3 A. M. Subject, however, did not appear again.

I then returned car to Hertz station, and proceeded via cab to Hotel, in doing so incurring an expense of $1.15. I then discontinued.

Expenses:

Carfare	.08
Phone Call	.05
Subsistence	8 50
Car Rental	9 19
Cab Bill	1 15
Incidentals	.50
Laundry bill	2 16
Total Exp.	$21 63

Time 1½."

(46.)

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 190 which he identified as being the handwritten report of operative O-14, O'Reilly, for October 28th when Lamb was the subject, from which a typewritten report was made and sent to Day.

Thereupon the following occurred:

Mr. Crim: I make the same objection.

The Court: I understand there was a typewritten report from this that was sent to Mr. Day?

The Witness: Yes.

The Court: The objection is overruled.

Thereupon the Government introduced in evidence the following:

227 "GOVERNMENT'S EXHIBIT No. 190."

"#25.
JJC. C. G. R.
10/31/27.
#O 14.
N. Y. 5023.
H. R. Lamb.

Friday, 10/28/27.

Continuing on the above operation at 3 P. M. I went to the D. & G. Bldg. and awaited subjects appearance.

At 4:30 subject had not come out. At this time I went to the neighborhood of his home and took up a position of surveillance of both his house and garage alley. I cruised the neighborhood and checked all parked cars.

I held surveillance until 10 P. M. but no one entered or left the house during this time.

At this hour I went to the rear of subjects house and examined the private garages but could not determine if subjects car was in or not as the two garages were tightly locked.

At 11:30 P. M. by using a suitable pretext I learned that subject had left the city yesterday afternoon and had gone to either Richmond or Charlottesville, Va., and would return on Monday morning He had driven his car on the trip.

This information coming from a reliable source I returned the hired car to the garage and going to my hotel disc. at 12:40 midnight.

Hotel	5 00
Meals	3 40
Car hire	4 80
Phone	15
Taxi	1 20
Gratuities	35

Time ——— 52."

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 191, which he identified as being another list of automobiles which were referred to in the men's reports.

Thereupon the following occurred:

Mr. Crim: The same objection with respect to that paper.

The Court: Is that a typewritten report?

Mr. Gordon: Nos, these are automobile numbers.

The Court: Oh, that is a list of automobile numbers?

228 Mr. Gordon: Just automobile numbers, yes, Your Honor.

The Court: The objection is overruled.

Mr. Crim: I desire to note an exception.

Thereupon the Government introduced in evidence the following:

"Government's Exhibit No. 191."

"Wardman Park Hotel,
Connecticut Avenue and Woodley Road N. W.,
Washington, D. C.

"#27
JJC
10/31/27

K-37-24-11	S-5099—Ford Sed.
K-27-24-5	U-3318—Ford Cpe.
M-20-24-1	Q-7387—Small Car.
L-36-25-4	M-689—Chev. Sed.

103-D- D M-20
204-D- S-81

L-36-27-4	207-501 Md.
L-36-27-4	Chev. Tour. M-6748.
L-36-27-4	H-1874.
S-81-29- Run	R-1340.
M-20-29-1	U-4595.

53."

Thereupon the witness continued as follows:

On three different occasions, the 21st, 24th and 25th of October, money aggregating $1,500 was brought over to me by Vietsch. I also received $200 from the New York office, and I brought $100 with me from the Philadelphia office. That $1,800 more than paid all of the expenses. The amount of money rendered to the operatives, and the expenses, was between $1,400 and $1,500.

I do not remember how many investigations I made of owner of automobiles whose license numbers I had a memorandum of. The reports will show. A report was rendered for every investigation made. Day gave me the directions for the investigations of those automobiles, and I conveyed it to the operatives.

Thereupon the witness was handed papers marked
229 Government's Exhibits for Identification 192 to 199, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 18, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Littleton: I call your Honor's attention, by way of objection, to the objection made the other day to a similar offer of the Government. I do not wish to go any further than to say that I desire to have in the record the objection. So far as I can see or make out, there can be no possible relevancy or binding force of these documents upon the respondent Sinclair, or, for that matter, any respondent in the case. They are all primary reports of the operatives of October 18, 1927, made to their superior, Mr. Ruddy, from which was transcripted, or compiled the reports which finally reached some one or more of the respondents, and that is all, and I can conceive of no possible issue in this matter now pending, and I, therefore, make the objection.

Mr. Crim: We make our same objection.

The Court: I am not now deciding whether these operatives' reports, as Mr. Ruddy has told us, that he sent to his principals, as he calls them, Mr. Sherman Burns, whether they are binding at all upon any of the other respondents. I noted the objections that have been made. I do not consider that counsel for Messrs. Sinclair and Day, or Mr. Sheldon Clark, or Mr. Vietsch, may be bound necessarily by their reception in evidence. I am receiving them, certainly so far as Sherman Burns is concerned, who directed the witness to come to Washington and take his instructions from Mr. Day, and he told us what was done under his direction, and, as I understand, it was pur-
230 suant to the instructions received from Mr. Day, but I think it is only fair to the respondents to say that it is

still open to them at a later day to present more fully any objection that they may wish to urge to the evidence that is now being received. They are received as a piece of evidence that may affect Mr. Sherman Burns, and for any relevant or probative force they may have as against Mr. Sherman Burns.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 192."

"N. Y. Op. 5023.
Phila. Mgr. C. G. R.

Oct. 18/27, Tues.

Acting under instructions from Principal W. S. B. I left Phila. at 6:50 p. m. for Washington and met client at place designated who gave me instructions.

Leaving client I checked in at Wardman Park Hotel & proceeded to carry out client's instructions.

R. R. Fare & Pullman	6.03
Taxi hire Phila.	1.30
Taxi hire Wash.	3.60
Meals & tips	2.10
Hotel	6.00
	$19.03

Time, 1 day."

"GOVERNMENT'S EXHIBIT No. 193."

"Phil. #5023.
N. Y. Inv. B4.

En Route Washington, D. C., October 18, 1927.

In compliance with instructions from Manager T. A. S. I left the New York Office at four o'clock P. M. and went to my home in order to prepare to leave town.

Getting my grip, I returned to the New York office for further instructions, whereupon I was directed to board the midnight train and go to Washington, D. C. I went to the Pennsylvania Station and bought railroad and Pullman

tickets. I got on the train and discontinued for the day at twelve o'clock, midnight.

Expenses, Railroad & Pullman	$11.89
Carfare	.15
Dinner	1.00
	$13.04

Time 1 day."

231 "GOVERNMENT'S EXHIBIT No. 194."

"N. Y.
N. Y. Op. D9 Reports:

New York City, Oct. 18, 1927.

At 3.45 p. m. I received instructions from Manager T. A. S. to proceed to my home pack my bag and return to the office of the Agency at 6.45 P. M. I returned to the office of the Agency and was instructed to proceed to Washington, D. C. and report to our Mr. Ruddy.

At 12 o'clock midnight I boarded train for Washington, D. C. and retired for the night.

Expenses:	
Railroad fare, berth	11.89
& tip to Pullman porter	.25
Subway	.15
Dinner	1.00
	$13.29

1 day."

"GOVERNMENT'S EXHIBIT No. 195."

"*Special Report.*

"N. Y. 5023.
N. Y. Investigator K 27 reports:

N. Y., Tuesday, Oct. 18, '27.

Pursuant to instructions received from N. Y. Mgr. T. A. S. left office of agency at 3.45 P. M. in order to prepare to leave for Washington, D. C. returned to office of agency at 6.00 p. m. & received instructions to proceed to Washington D C on the Midnight Train.

At 10.00 P M proceeded to Pennsylvania Terminal & purchased R. R. Ticket & Pullman Berty (Stub attached) & boarded the 12.35 A. M. train & discontinued for the day. K 27.

Expenses:

C Fares	.20
Supper	1.00
	$1.20
R. R. Fare & Pullman	11.89
	$13.09

Time 1 day. 1 day."

"GOVERNMENT'S EXHIBIT No. 196."

"*Special Report.*

Philadelphia Investigator L.36 Reports:

Washington, D. C., Tuesday, October 18th, 1927.

Acting under isntructions, Ass't Mgr. M. L. W. I proceeded from my home to Philada Office and was given instructions to report to Mr. Ruddy at Washington, D. C. I left immediately for Washington D. C. as per instructions. Time 6 P. M.

1 day. L.36.

(Upon the reverse side of this report, written in blue pencil, appears the following:)

232 "Expenses:

Train Fare from Philada to Washington, D. C.	4.90
Berth	3.50
Supper	1.00
Car Fare	.30
	$9.70"

"GOVERNMENT'S EXHIBIT No. 197."

"N. Y. off. opp. 5023.

N. Y. opp. 03 reports:

Tues., Oct. 18, 1927.

Acting under instructions of Mgr. T. A. S. I left Agency office at 6:00 P. M. and proceeded home, preparatory to leaving for Washington, D. C. on Midnight train. At 12.35 took train from Penn Sta. and discontinued for the day.

"Expenses:

Carfare pullman & Pullman tip	$12.14
Subway & telephone	.15
Supper	1.00
Total	$13.29

Time 1 day. 1 day."

"GOVERNMENT'S EXHIBIT No. 198."

"*Special Report.*

P.

"Phila. Instgr. S-71 Reports:

Washington, D. C., Tuesday, Oct. 18th, 1927.

Pursuant to instructions received from asst mgr. M. L. W. at 6:30 P. M. I proceeded to Washington, D. C. discontinuing at 12 Midnight.

Expenses:

Phila. to Wash.	4.90
Sleeper	3.50
	8.40

1 day."

"GOVERNMENT'S EXHIBIT No. 199."

"*Special Report.*

"N. Y. Operating #5023.

Philadelphia Investigator X-12:

Washington, D. C., Tuesday, Oct. 18th, 1927.

Pursuant to instructions from Manager C. G. R. I accompanied him on 6:50 P. M. to Washington, D. C.

Upon arrival I went to Wardman Park Hotel and checked in—awaiting instructions.

Accompanied Mgr. C. G. R., to Union Station and
233 made list of hotels to assign men in morning.

Discontinuing temporarily at 12:00 midnight.

Expenses:

R. R. Fare & Pullman	$6.03
Taxi	3.60
Meal & tip	2.00
Hotel	6.00
	$17.63

1 day."

Thereupon the witness was handed papers marked Government's Exhibits for Identification 200 to 212, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 19, 1927, which were sent to Mr. Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: We are making our same objection, if your Honor please, to 200 to 212.

The Court: The same ruling of course, gentlemen, in making my ruling I am assuming that these documents are of the same status as the others that have gone in under your objection. If there is any other special objection, I want to know it.

Mr. Hoover: Your Honor, we can not make a special objection until we examine these things, as I stated with reference to the others; the same statement made with reference to them will apply to these. If we have any specific objections after examining them, we will call them to the Court's attention.

234 Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 200."

"N. Y. Op. 5023.
"Mgr. C. G. R.

Wash., Oct. 19/27, Wed.

"Continuing at 12.25 a. m. I proceeded to Baltimore to arrange details *with* over phone with Prin. W. S. B. returning to Washington at 4.30 a. m. At 8.30 a. m. met Investigators at Union Dept. Assigned them to Hotels and later gave them their instructions. Had interview with client at 6.15 p. m.

At 12 midnight was still engaged. I called Prin. W. S. B. at midnight and Phila. office during day.

Hotel	6.00
Meals	3.60
R. R. Fare Balt. & ret.	2.88
Taxi hire	3.70
L. D. Phone calls	6.90
Local calls & tips	1.55
	24.63

Time 2 days."

GOVERNMENT'S EXHIBIT No. 201."

"Phila. #2.
N. Y. Inv. B4.

Washington, D. C., October 19, 1927.

"At Twelve-one o'clock, A. M., today I was on the 'Midnight' en route to Washington, D. C. I arrived in Washington and left the train at Seven o'clock.

I met Mgr. C. G. R. at Eight-thirty o'clock and was instructed by him to go to the Plaza Hotel and wait there in my room until he telephoned to me. I followed these instructions. At Eleven o'clock, A. M., I received a telephone call and was instructed to report to Manager C. G. R. at the Commodore Hotel.

I went to that place immediately and received further instructions. I was given the position of my subject and instructed to get in the *place* for the purpose of getting an opportunity to look at him and know who he is.

Since it was almost lunch time before I had received final instructions, I waited until after one o'clock before going to the

(2)

B4. Oct. 20, 1927.

place.

235 Arriving at the place shortly after One o'clock P. M., I found a number of people waiting to get in. I went around to the corridor alongside the room and looked through the windows. However, I could see nothing but the backs of a few heads. Returning to the entrance, I wainted my turn and succeeded in gaining entrance about ten minutes before the end of the day's business.

My subject came out with the others. They stood in groups and talked for a few minutes and then dispersed. My subject walked to his place of business, which is not many blocks distant from the other place. Although I followed at a great distance, I did not see anyone I thought might be following the subject. On leaving the other place,

(3)

B4. Oct. 20, 1927.

after talking for a few minutes as has been mentioned, the subject walked away with two other men, but left them on the corner, where they turned in the direction opposite to the one which he took. I saw no more of them.

Just before reaching the entrance to this place of business, the subject met another man who stopped him for about five seconds. The other man seemed to be an acquaintance of the subject. He was dressed in a dark suit and gray hat and wore no top-coat. He wore a high stiff collar and a black tie with small white dots spaced far apart. He had a dark beard, slightly hollow cheeks and a rather prominent nose (Not the Hebrew type of nose). He was about forty-five years of age and about five feet eight or nine inches in height. He weighed about one hundred and fifty pounds. I think he works with the subject.

The subject came out of his place

(4)

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of business at six-fifteen and boarded a trolley car at the corner. He went home. A few women got off at the same street with him, but nobody followed him home. I walked around the neighborhood, covering all places from which the subject's house could be watched, but could find nobody standing around except one disreputable-looking colored boy of about twenty years who stood at various places in the subject's street for about one half hour and then went away. There was a man in a Chevrolet coach parked opposite to the subject's house. Shortly after the subject entered his house this man started his motor and started to pull away from the curb, looking in the direction of the subject's house. I was then walking east. I walked
236 to the corner and then returned west to the other corner. The man had not yet moved away

(5)

B4 Oct. 20, 1927.

from the curb. Shortly afterward he moved from the curb, turned his car and parked on the other side of the street, almost in front of the subject's house. It was too dark to get a description of this man. He seems to be thin and about fifty years of age. He wears glasses of some kind. His being there might, and probably does mean nothing at all. I mention him because he seemed, in the darkness, to be looking intently at the subject's house. He went away in about fifteen minutes.

His license number is O-9254.

At about eight o'clock P. M., a Ford with a light delivery body (closed) license #B9057 drove up to the curb. I do not know who was in it or where he went. It was very dark in front of the subject's house and what few lights there are in the vicinity were so reflected from the wet streets as to make seeing anything except

(6)

B4 10/20/27.

at close range, almost impossible. I am quite sure, however, that nobody entered the subject's house. There are

white pillars on the front stoop and, by watching these, which I could see, I knew that nobody passed in. I walked past the truck and, as far as I could see, it was empty.

I left the vicinity of the subject's house at Ten o'clock P. M. and returned to my hotel, where I arrived and discontinued for the day at Eleven o'clock P. M.

NOTE.—Because of the neighborhood of the subject's house, I thought it best for me not to remain long in any one place. Therefore, since I had to watch for anyone who might also be keeping the subject under surveillance, I spent my time in walking around, standing on corners only a few minutes at a time.

I do not think there is anyone watching the subject unless his house is

(7)

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being kept under surveillance from inside some other house, or from a darkened room in the Colored Trade School across the street.

Expenses:

Meals	$3.00
Hotel	4.00
Carfare	.32
Telephone	.15
Tip to Pullman porter	.50
	$7.97

Time, 1½."

237 "GOVERNMENT'S EXHIBIT No. 202."

Washington, D. C., Oct. 19, 1927.

"N. Y. Op. D 9 Reports:

"At about 8:30 A. M. I was joined by our Mgr. C. G. R. & Asst. Mgr. G. H. R. at Union Station and was instructed to check in the Hotel Commodore where I was to wait for further orders.

About 10:30 A. M. I was joined again by Mgr. C. G. R. at my Hotel and was instructed to proceed to the Criminal

Dept. Supreme Court part #1 at City Hall and place Juror #7 Mrs. Annella L. Bailey under surveillance. I then proceeded to City Hall and took up surveillance.

About 3:00 P. M. Subject left Court Room and boarded a trolley car. Due to the fact that there were several men in the vicinity who appeared to be watching the Subject I deemed advisable not to board trolley.

(2)

Most of the men in the vicinity had been in the Court Room during the afternoon proceedings. I then engaged a taxi and after some difficulty due to traffic congestion and one way streets I overtook the trolley that the Subject was on and I then boarded same. I took particular notice to see if I were followed by anyone and feel certain that I was not.

At about 3:35 P. M. the Subject alighted from trolley car directly in front of her home #2700 Connecticut Avenue where she entered. This is an apartment house which has at least 60 apartments in same. I then placed the entrance of same under surveillance.

At about 10:30 P. M. not seeing the Subject again and there being no one loitering about the vicinity of

(3)

N. Y. Op. D-9. Wash., D. C., Oct. 10, 1927.

Subjects home I left the neighborhood and returned to my Hotel where I discontinued for the day at 10:15 P. M.

Expenses:

Meals	3.00
Hotel	4.00
Phone	.30
Taxi	.90
Incidental on Surveillance	.25
Carfare	.49
	$8.94

1½.

"GOVERNMENT'S EXHIBIT No. 203."

Washington, D. C., Wed., Oct. 19th, 1927.

"Op. H. 4. #3.

Report.

238 "In pursuance with instructions from Mgr. C. L. V.: I left my home at 6:30 A.M., and boarded B. & O. Railroad at Camden Station, Baltimore, Md., at 7:20 A.M. and proceeded to Washington, D. C., where I arrived at 8:20 A.M., and met Mgr. C. G. R.: as per instructions.

Mgr. C. G. R. instructed me to get a room at the Metropolitan Hotel, 615 Pennsylvania Ave.; and wait there for further instructions.

Later I was notified to call at the National Hotel, where I again met Mgr. C. G. R. for further instructions—to place under surveillance John J. Costinett, who's residence is 1442 Fairmont St., N. W., and who's place of business is at 1212 New York Ave., N. W., which is a tailor shop. Costinett is designated as juror No. 3 and described as 61 years old, and an Italian, and was being guarded by two men.

I then proceeded to the Supreme Court, Capitol Building. But was unable to pick out Costinett.

After court adjourned I proceeded to 1212 New York Ave., which I placed under surveillance.

However, I kept at a little distance, as I did

(2)

not know just where Costinett's guards might be concealed, and it was possible that they might also have watched the vicinity about 1212 New York Ave.

No doubt Costinett went to his place of business right after court was over, and no doubt he arrived there before I did. As I did not see him enter.

However, at 6:05 P. M., two young looking men entered Costinett's shop, and immediately a man whom I assume is Costinett went out with them, they walked about 10 feet, when they entered a large olive colored sedan automobile. I then approached closer to the corner of New York Ave. & 12th St., where I felt sure I would have a better look at them and also get the automobile license number.

However, the machine turned around almost in the middle of the block, and it was impossible from my position to see the license plate properly, due partly to lighting conditions existing at this time of the day, and the glare of head lights of other machines.

As soon as this machine had turned around it proceeded westward in New York Ave., then turned north on 13th St., and passed out of sight. It was impossible for me to hire a machine,

(3)

in such a brief time, and there were no hiring machines in this vicinity at this time. I then proceeded by street car to 1442 Fairmont St., which is placed under surveil-
239 lance as soon as I arrived there at 6:30 P.M. I kept his residence under surveillance until 11:15 P.M., as I did not see anything further of him up to this time, I discontinued operation.

Expense:

Street car fare in Baltimore	.08
Railroad fare Baltimore to Washington	1.44
Room rent at hotel	2.50
Subsistence	1.85
Street car fare in Washington	.32
Total	$6.19

1½."

"GOVERNMENT'S EXHIBIT No. 204."

"Washington Operation Case No. (6) K 1 *Balt.* 9/19/27.

Acting upon the instructions of Mgr. C. L. V. of the Balto. Office, I left my home in Balto. at 6:30 a.m. and proceeded by street car to Camden Sta. where I met H-4 and at 7:20 PM having purchased a Ticket we boarded a train and was enroute to Washington, D. C., arriving at Washington at 8:15, we went to the Lobby of the Station and at 8:60 met Mgr. Ruddy as had been previously arranged by Mgr. C. L. V. We were sent to Hotels to secure Quarters on reaching the one I was sent to I found I could not get a room. I

then returned to Union Sta. trying to find Mgr. Ruddy, not being successful I returned to the vicinity of said Hotel. Again I finally met H-4 who took me to the National Hotel where I met Mr. Ruddy and other Operatives there. I was given the name and address of Subject that I am to shadow after receiving instructions from Mgr. Ruddy I went to the Harris Hotel and secured accommodations. I then went to dinner and on finishing same went to the U. S. Supreme Court to try and get spot on Subject but learned that he was not there, that the case is being tried in the Dist. Supreme Court. I then went there but on my arrival found that this Court had adjourned for the day I left then and

(2)

went to the vicinity of Subjects home 1104 4½ St. S. W. and after loitering about for some time and not wanting to create suspicion and not having saw the subject, Chas. Holt, I discontinued owing to the inclemency of the weather but will endeavor to pick Subject up at his home in the morning and trail him to court and if not successful in spotting him at his home will go to 2 part of Dist. Supreme Court and get Spot on him there it now being 9 PM I discontinued for the day.

Balto. Operative K-1.

Expenses:

240	Carfare in Balto	15
	R. R. Fare Balto. to Washington	1 44
Room in Hotel at Washington		3 00
Dinner in Washington		75
Supper		75
Carfare, tips & Etc. in Wash		65
		$6 74

1½."

"GOVERNMENT'S EXHIBIT No. 205."

"#8.
"Klein.

Special Report.

Washington, D. C., Wednesday, Oct. 19, 1927.

"N. Y. Investigator K 27 reports:

Continuing on above captioned matter pursuant to instructions received from Mgr. T. A. S. arrived at Washington, DC at 7.00 A. M., & at 8.30 A. M. met Mgr. C. G. R. at Union Station, & received instructions to check in at a designated Hotel & await there for further instructions.

At 11.30 A. M. received further instructions relative to placing subject one Bernice K. Heaton 1228 I (Eye) St. N. W. Washington, D. C., under surveillance.

I then proceeded to vicinity of subjects home to acquaint myself with neighborhood & then proceeded to vicinity of the Court House at Louisiana Ave. & 4th St. N. W. & at 3.05 P. M. I picked up subject leaving the Court House accompanied by Subject Juror #7.

"(Continued)

"*Special Report*"

(2)

Wash., D. C., Wednesday, Oct. 19, '27.

"N. Y. Investigator K27 reports:

Description of subject as follows:

Age about 30 years 5' 6½ 125 lbs. Slender Built Blonde Hair, (Does not appear to be bobbed) Light Complexion, Wore Tan Hat Tan Coat Collar & front trimmed with (Deer Skin Fur) Light colored Stockings & Tan shoes.

Subject & Juror #7 boarded a Chain Bridge Surface Car at 5th & D St. N. W. at 3.10 P. M. & rode to & subject alighted alone at I St. & 14th St. N. W. & walked to the Frazee Potomac Laundry at 827 13th St. N. W. at 3.25 P. M. & entered #1228 I St. (The Conard Bldg.) where subject resides at 3.30 P. M.

Subject resides in a Large Apartment House which has the main entrance on I St. & through the Lobby of the House, one can enter & leave through 3 stores fronting on 13th St. N. W., Nos. 823, 825 & 827.

Subject had no male escort leaving the Court
241 House, & during surveillance of house did not see any male person or persons

"*Special Report.*

(3)

Wash., D. C., Wednesday, Oct. 19, '27.

N. Y. Investigator K27 reports:

in or around vicinity.

At 7.50 P. M. I noticed a Red Top Taxicab #H 317 stop at door of subjects residence & about 7.52 P. M. subject came out attired in same coat, accompanied by the following described female.

Age about 22 years 5' 6" Slender Built Black Hair. About 120 lbs. Wore Grey Hat Tan Coat & subject & female companion entered above cab & as I was unable to secure cab, owing to locality, could not follow. Phoned Mgr. Ruddy at about 8.10 P. M.

I then continued surveillance to 10.00 P. M. but did not see subject or companion return so returned to Hotel & discontinued at 10.30 P. M.

K 27.

Expenses:

Subsistence	8 00
Incidentals	35
Carfare	40
Phones	05
	$8 80

1½."

"GOVERNMENT'S EXHIBIT No. 206."

Special Report.

"Long.
N. Y. op.
Philadelphia Investigator L-36.

Washington, D. C., Wednesday, October 19th, 1927.

Continuing on above case after arriving in Washington, D. C., I was met by Mgr. C. G. R. and ordered to the Hotel Harrington where I engaged a room and waited for instructions.

I was given juror No. #4 to shadow, Norman Glasscock, 1013 Eighth St. N. W. I proceeded to the Capitol Bldg. and joined in with the visitors on sightseeing and made inquiry as to where the case was being tried. I learnt that it was up at 5th and D St. N. W. so proceeded there and court room was crowded and could not get in. I then proceeded to vicinity of subject's home, 1013 Eighth St. N. W. and took up watch and observed man enter house resembling subject at 5.30 P. M. Machines were parked on both sides of 8th St. above and below subjects house.

At 8.25 P. M. subject came out and entered a small car either Chevrolet or Overland Coach

(2)

District of Columbia Registration P-1993. Another man was with subject about 30 yrs. of age, 5 ft. 8 in.,
242 weighing about 150 lbs. Both entered machine and drove to the Post Office Bldg. at 11th and Pennsylvania Ave. where they parked the car and entered remaining about one-half hour, when subject and two men came out and one man left and walked over and up Penna. Ave. The man that drove the car down took subject back to his home and left immediately. I continued watch until 12 Midnight and not seeing anything further of subject I returned to hotel and discontinued for the day.

L-36.

(And on the reverse side of this report, in blue pencil, the following appears:)

17
18

136
17

306

Expenses:

Room	5 00	
Bkfst	75	3.35
Lunch	1 10	
Supper	1 00	
Mid Lunch	50	
Tablet	15	
	$8 50	
Mileage 18 miles	3 06	
	$11 56	

1½."

"GOVERNMENT'S EXHIBIT No. 207."

"#10. WSB.
N. Y. Operating #—.

N. Y. Inv. M20 Reports:

Washington, D. C., October 19, 1927.

Pursuant to instructions received from Prin WSB at 12 o'clock noon today and received orders relative to this matter.

I got my luggage and boarded the 4.42 P. M. train en route to Washington, D. C., where I arrived at 9.55 P. M. & met Mgr. V. G. R. I received further instructions & then registered at the Washington Hotel. I was assigned to Room #646.

At 11 P. M. I wrote this report and retired.

My subject will be William H. Goucher (#10) 1408 Franklin St. N. W.

While on the train I had dinner and was

(2)

taxed $1.50.

R. R. Fare	$10 02
Dinner	1 50
Taxi to Hotel	65
Hotel	5 00
Train Porter & Ht.	35
	$17 52

D. E. Merritt, M 20, 1."

243 "GOVERNMENT'S EXHIBIT No. 208."

"#1.

"O'Neill.

"N. Y. Opp. 03 reports:

Wed., Oct. 19, 1927.

"Arriving in Washington, D. C. at 6.30 A M I waited in Union Station, and at 8.30 A M met Mgr. who gave me full instructions. I left Union Sta. at 9 a m and checked in at the Capitol Park Hotel. At 10.30 I met Mgr CGR and was given name and address of my subject, John P. Kern, 1315 N. Carolina Ave. N E juror #1. At 1 P M I proceeded to City Hall, and waited in line to get into Supreme Court #2, where case is being tried. At 2 P M I managed to get by Guard and into court room, where I got a spot on my subject. About 30 yrs. old, 160 lbs, 5' 9" tall, smooth shaven rather slim, and has a very conspicuous nose, having been broken once or twice. He wore a dark suit & black shoes. At 3.00 the Judge dismissed Court, and Jurors went out, the back way. By the time I arrived out near the back entrance subject had disappeared. I immediately took a taxi and proceeded to his home at #1315 No. Carolina Ave. N E. Arriving at vicinity I discharged cab and kept subjects home and surrounding vicinity under surveillance. I did not at any time see anyone around that looked the least suspicious. At 7.00 P M Subject came out of house and

went to drug store, on corner of 13th & E Capitol. He came in contact with no one, on way to the store. After making a purchase he returned to his home, and saw or spoke to no one on way back. I continued surveillance of vicinity up to 9.45 and not seeing subject come out I left vicinity and discontinued.

LENIN.

Expenses:

Room & Means	$8 00
Taxi & Tip	75
Carfare & Tele	25
Report paper & pencil	25
	$9 25"

"GOVERNMENT'S EXHIBIT No. 209."

"C. G. R.
"#014.
N. Y. #5023.

Wednesday, 10/19/27.

Upon instructions received from W. S. B. at 12 noon I went to my home and made preparations for going out of town.

I returned to the agency at 2.45 P. M. and received further instructions to leave for Washington, D. C. at once and report to Mgr. C. G. R. upon my arrival.

I left N. Y. at 4.45 P. M. arriving in Washington, D. C. at 10 P M and was met by Mgr. C. G. R.

I immediately accompanied Mgr. C. G. R. on the operation and received instructions as to the duties assigned to me.

244 At 12 Mid-night I discontinued for the day.

N. Y. carfare	35
Phone	15
To Wash. R. R.	10 04
En route supper	1 75
Porter	25
Hotel	5 00
	$17 34

Time 1½."

"GOVERNMENT EXHIBIT No. 210."

"#9.
"Cable Mayflower. Telephone Main 9800.

The Mayflower,
Washington, D. C.

"Philadelphia Investigator 870 Reports:

Phila. Pa., Wednesday, Oct. 19, 1927.

"Pursuant to instructions from Ass't Mgr. M. L. W., I left the agency at 10 A. M. and proceeded by Cab to West Philadelphia station where I boarded the 11.36 A. M. Pennsylvania train arriving in Washington at 2.45 P. M. I made several calls endeavoring to get in communication with Mgr. C. G. R. at his Hotel.

I later met Mgr. C. G. R. and was instructed to accompany Asst. Mgr. G. H. R. to the Court house, arriving there at 4.30 P. M. We found court had adjourned, we returned and met Mgr. C. G. R., who instructed me to check into the Hotel Mayflower, I accordingly chartered cab and after registering called Mgr. C. G. R. advising him of my room Number, etc.

I later met him at 8.30 P. M., received instructions for tomorrow and discontinued at 9.30 P. M.

Expenses:

Phila. Cab	$1 10
Train fare	4 90
Lunch	75
Telephone	30
Taxi to Hotel	90
Gratuity to bellboy	25
Supper	1 00
Total	$9 20
Hotel	5 00
	$14 20

"1½."

"GOVERNMENT'S EXHIBIT No. 211."

Special Report.

Washington, D. C., Wednesday, Oct. 19, 1927.

"Phila. Instgr. S-71 Reports:

Continuing the above operation at 12:01 A. M. at
245 8:30 a. m. I met Mgr. C. G. R. and was instructed to check in the Harrington Hotel.

I later received further instructions from Mgr. C. G. R. and proceeded to the Capital Bldg. and was informed that recess had been declared until 2:30 P. M. at 2:30 P. M. I learned that the court where subject of mine could be located was at the Federal Court D & 5th St.

I then proceeded to the Federal Court but they had adjourned at 3:00 P. M. I then proceeded to the subject's home address 1637 U St. S. E. where I remained on watch for subject until 9:00 P. M. the subject not making his appearance at that time I returned to my Hotel and discontinued at 10:00 P. M.

Expense:

Hotel	5.00
Meals	3.00
Telephone	.25
Car fare	.32
	$8.57

1½."

"GOVERNMENT'S EXHIBIT No. 212."

"*Special Report.*

Washington, D. C., Wednesday, Oct. 19th, 1927.

"N. Y. Operating #5023.
Philadelphia Investigator X-12.

Continuing upon the above operation at 12.01 A. M., I returned to Hotel Wardman Park and made list of Hotels to be used by men in the morning—showing hotel name—address and phone number.

Was given additional instructions by Mgr. C. G. R., on his return from Baltimore, Md. at 4:30 A. M. at which time I discontinued temporarily.

At 8:30 A. M. I accompanied Mgr. C. G. R. to Union Station and assigned men to hotels. Also assisted Mgr. C. G. R., assign subjects to the Investigators.

I made several trips to Court House and among men during the day and evening accompanying Mgr. C. G. R.

Discontinued temporarily 12:00 Midnight.

Expenses:

Hotel	6.00
Meals	3.50
Taxi	16.50
Phones	.60
	$26.60

2 days."

246 Thereupon the witness was handed papers marked Government's Exhibits for Identification 213 to 226, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 20, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.

The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 213."

Wash., Oct. 20/27, Thu.

"N. Y. Op. 5023.
Mgr. C. G. R.

Continuing on above operation at 12 noon, I discontinued at 3 a. m. temporarily at 8 a. m. met with investigators and connected with client. Called Phila. regarding other investigators. Met investigators from New York & Phila. gave them detailed instructions. At midnight was still engaged in matters pertaining to operation.

Hotel	$6.00
Meals & tips	4.10
Taxi hire	4.60
L. D calls	4.80
Local calls	1.20
	$20.70

1½."

"GOVERNMENT'S EXHIBIT No. 214."

"C. G. R.
"Phil. # —.
N. Y. Inv. B-4.

October 20, 1927.

Continuing on this case today, I left my hotel at seven o'clock A. M. and went to the vicinity of the subject's home.

The subject left the house at eight thirty and went to his place of business. Leaving there at Nine twenty-five o'clock he went to the other place and went in the main entrance.

He came out shortly before one o'clock and went into a coffee shop across the street. Coming out of there he walked to the main entrance and sat on the steps
247 for about ten minutes after which he entered.

Coming out at three he crossed the street and had his picture taken. After about ten minutes he went to his place of business.

He came out at six ten o'clock P. M., and, boarding a trolley car, went home.

I remained in the vicinity until ten o'clock P. M., but saw nobody enter or leave the house.

At ten o'clock I returned to my hotel where I discontinued for the day at eleven o'clock P. M.

Expense:

Subsistence	$8.00
Carfare	.32
Telephone	.10
	$8.42

(Time 1½.)"

"GOVERNMENT'S EXHIBIT No. 215."

Mr. W. S. B.
"#7.
N. Y. Opt. —.
N. Y. Op. D 9 Reports:

Washington, D. C., Oct. 20, 1927.

Continuing on the above matter I left my hotel at 7:30 A. M. and proceeded to the vicinity of subjects home, #2700 Connecticut Avenue and placed entrance under surveillance.

About 9:05 A. M. subject came out of the above address and boarded trolley car, at 18th St. and Columbia Road subject transferred to another trolley car and proceeded to Court House where she entered about 9:45 A. M.

At 12:45 P. M. subject came out of court House accompanied by Juror #8 and entered a shoe shine parlor directly opposite Court House where Juror #8 had a shoe fixed. Subject & her companion Juror #8 then entered Court Coffee Shoppe opposite Court House where they had lunch and then returned to the Court House. Subject did not connect with any one at lunch time.

About 3.05 P. M. subject came out of Court House and posed for newspaper photographer with the other 11 Jurors opposite the Court House. She then walked to Hechts Dept. Store accompanied by Juror #8 where they entered and did some shopping. They then proceeded to Philipsborn Dept. Store on 11th St. near F N. W. where they remained for a short while and then proceeded to Brooks 'Ladies Store.' At 5.05 P. M. subject and her companion came out of Brooks and entered Stevens 'Ladies Shop' next door where they remained until 5:20 P. M. They then walked across the street to the "Rosedere" another Dept. Store where they remained a short while and then proceeded to 14th St. & N. Y. Ave. where they separated.
248 The last three stores mentioned above are located on G St. near 12th N. W.

Subject then boarded trolley car and alighted from same directly opposite her home #2700 Connecticut Ave. where she entered at 6:25 P. M. I continued surveillance until 9:50 P. M. and not seeing the subject again I assumed she

was in for the night, so I left the vicinity and discontinued for the day at 10:00 P. M.

There are quite a number of women living in the same apartment house with the subject on her build and it is necessary at times to walk a block or so when one comes out to determine whether it is the subject. It is impossible to stand very close to the entrance to the apartment.

To the best of my knowledge there was no one following my subject today and there was no one loitering in the vicinity of her home.

Expenses:

Rooms and Meals	7.00
Carfare	.58
	$7.58

"GOVERNMENT'S EXHIBIT No. 216."

Thurs., Oct. 20th, 1927, Washington, D. C.

"Op. H. 4.

Report.

"Acting under instructions from Mgr. C. G. R.—I arrived at the vicinity of 1442 Fairmont St. at 7:30 A. M. which I placed under surveillance up to 10:00 A. M. But did not see Costinett come out. This may be due to the fact that Costinett may have left before my arrival, in order to do some work at his shop before going to court, so he would not have to neglect his customers too much.

So at 10:00 A. M. I proceeded to the court house where I noticed Costinett in the jury box. As soon as I saw him in court, I went out again.

I went back to the vicinity of the court house at John Marshall and D Sts., at 11.50 A. M., to trail Costinett during his dinner hour, but as there are different ways of leaving the court house and it is possible that he may have gone out through the rear, while I watched the front, as I failed to see him up to 12:20 P. M., I immediately pro-

ceeded to his home, thinking that he might have gone there for dinner.

Arriving at his home at 12.35 P. M., I placed it under surveillance until 1.00 P. M., but did not see Costinett leave, this makes it certain that he ate his lunch elsewhere, unless he remained in the court house.

I returned to the vicinity of the court house at 2.40
249 P. M. At 3.15 P. M. I saw Costinett come out of the court house, and with about a dozen others proceeded to the rear of the court house building where he passed from view, as it was unwise to run across the court house lot, I immediately proceeded north on 5th St. to F and 4th Sts., where I fully expected to catch up with Costinett, as he had headed in this direction. However, I failed to locate him at 4th & F Sts., thinking that Costinett may have retraced his steps, I then immediately returned to 5th St. near D St. Not finding him there, I immediately proceeded to 1212 New York Ave. N. W.

At 3.35 P. M., I saw Costinett come out of an alley that adjoins his shop, and enter his place of business, this alley, which has a bend in it leads into H St.

Immediately behind Costinett, walked a young man, who was nearly 6 feet tall, about 27 years old, of medium build, but rather thin face, light complexion and light hair, regular features, except nose a trifle large. He wore a light yellow cap and overcoat, russet shoes and dark trousers.

As he came up the alley, he appeared to be only a few feet behind Costinett. He immediately crossed to the north side of New York Ave. and took a position in New York Ave. just east of 13th St. where he remained standing for nearly an hour, looking in every direction.

At about the same time, he came out of the alley, another man arrived at the southeast corner of 12th St. and New York Ave. where the W. B. & A. station is located. This latter man appeared to be about 55 years old, with iron gray hair; he was very heavy built; about 5 feet 9 inches tall; weight nearly 190 lbs.; he had a round full face and large features; ruddy complexion; he wore a light brown overcoat; light gray hat with a hatband of darker gray striped with dark brown stripes; had on light gray trousers; black shoes; he remained at this last mention corner until 5.30 P. M., and when he was ready to leave, he

put on shell glasses. He was well dressed, and made an unusual- good appearance.

He looked very carefully in every direction especially down the 1200 block of New York Ave.

Costinett remained in his shop until 6.10 P. M., at which time, he closed his shop, then quickly slipped down the alley that adjoins his shop and leads into H Street.

I proceeded down 13th to H St., to head them off as this was the nearest for me. However, I was unable to locate them. Hoping that I might beat them to his home, I immediately took a taxi and proceeded to 1442 Fairmont St., N. W., where I arrived at 6:22 P. M.

When I arrived there, I saw a large sedan in front of 1442 Fairmont St., license No. P. 1220 D. C. This car resembled the machine he came home in last night. Evidently Costinett had arrived home before I could make it. As I kept his home under surveillance until 11.45 P. M., but saw nothing further of him.

250 The above mentioned was still in front of his home when I discontinued operation- at 11.45 P. M.

Expenses:

Room Rent	$2 50
Subsistence	2 25
Carfares	32
Taxi hire	1 30
Total	$6 37"

(1½.)

"Government's Exhibit No. 217."

"#6.

"Balt. Kl.

"Washington Operation Case No. —.

9/20/27.

In continuation of this operation I arose at 6.30 A. M. and on finishing Breakfast I went to the Dist. Supreme Court arriving there at 9.00 I stood in line so as to get a place inside of court that I may get a spot on Subject Charles Holt Juror. At 9.50 I was allowed to go in court room and saw Holt as he came in and took his seat in No. 6 chair I remained a few minutes and left court room at

11.45 A. M. I took up surveillance nearby Court house and at 12.50 P. M. subject came out walked to D and 6th Sts. purchased a cigar and walked back and at 1.10 again entered Court House at 2.30 P. I again took up surveillance at Court House at 3 P. Subject came and went to D. and Marshall Sts. stood with the other jurors and had Photo's taken. Subject then went South West on Marshall St. and boarded a car marked Wharves at Cor. 4½ St. and Missouri Ave. went to 4½ and L Sts., got off Car and at 3.35 P. entered his home. I remained in this vicinity until 10 P. M. when I considered it best to leave the neighborhood subject did not come out of his home from the time he entered until I left.

Expenses:

Carfare & Incidentals	46¢
Breakfast	65
Dinner	75
Supper	75
Room	3 00
	5 61"
4 Phone Calls, Mr. Ruddy & Mr. Creilly	40¢
	5 61
Total	6 01"

"GOVERNMENT'S EXHIBIT No. 218."

Special Report

#8.

"N. Y. Optg. #5023.

N. Y. Investigator K 27 reports:

Washington, D. C., Thursday, October 20, 1927.

Continuing on above captioned matter pursuant to instructions received from Mgr. Ruddy left hotel at 7.30 A. M. & proceeded to vicinity of subject's home, taking up surveillance at about 8.00 A. M.

At about 9.20 A. M. subject came out wearing a
251 Caracul Fur Coat & boarded surface car & alighted at 5th & D. St. N. W. entering Court House about 9.40 A. M.

At 12.45 P. M. subject came out of Ct. House with Juror 7 & both went to Court House Shoe Shining Parlor, 452 Louisiana Ave. where subject had shoes shined. A few minutes later both entered the Court House Coffee Shop. About 1.15 P. M. both came out & entered court.

At 3.05 P. M. subject & #7 came out & all the jurors had photo taken at D St. & John Marshall Place. At about 3.20 P. M. both went to Hechts Department Store at 7th & F St. N. W. at 3.35 P. M.

Both came out about 3.40 P. M. & went to Phillipsborn Dept. Store.

Special Report.

(2)

Optg. #—.

N. Y. Investigator K-27 reports:

Wash., D. C., Thursday, Oct. 20, 1927.

At 4.15 P. M. both went to Brooks Bros Store at 12th & G St. Came out at 5.05 P. M. & entered Stevens Hat Shop next door for a few moments.

Both then went to Rosedere Store across the Street for a few moments & then both walked to corner of 14th St. & N. Y. Ave. where they talked for a while & then subject left Juror #7 & walked to & entered her home about 6.00 P. M.

I remained in vicinity but did not see any male person or persons loitering in the neighborhood nor did I see subject leave the house again up to 10.00 P. M. at which time I left vicinity & returned to hotel discontinuing at 10.30 P. M.

Expenses:

C. Fares	32
Phones	10
Hotel	5 00
Meals	3 00
Incidentals	35
	$8 77

(1½.)

"GOVERNMENT'S EXHIBIT No. 219."

Special Report.

"N. Y. Operating #5023.

Phila. Investigator K-37 Reports:

Enroute to Washington, D. C.,
Thursday, Oct. 20, 1927.

Acting under instructions from Asst. Mgr. M. L. W., I boarded train at West Philadelphia Station for Washington at 9.23 P. M.

Upon my arrival at 12.20 A. M., I was instructed
252 to check in a hotel and await orders.

I discontinued at 1.30 A. M.

Expenses:

Taxi	75
Train	4 30
Pull.	1 13
Taxi	35
Room	3 00
Grat.	25
	$10.38

(1.)"

"GOVERNMENT'S EXHIBIT No. 220."

"*Special Report.*

"5023.

#4.

"Philadelphia Investigator L-36:

Washington, D. C., Thursday, October 20, 1927.

Continuing on above case I took up watch at 7 A. M. and subject came out of his house at 1913 Eighth St. N. W. and entered a light grey Oldsmobile Touring District of Columbia Registration Q-5818 and drove said car to Somerville's Brass Works on 13th St. below D, S. E. where he parked said car and entered. This is subjects place of employment. He remained until 9.45 a. m. when he came

out and entered his car and drove north on 13th east on D to Penna. Ave. and north on 5th and East on D, north on 3rd where he parked his car and walked back to the Court House and entered.

He came out at 12.20 P. M. by himself smoking cigar and proceeded to Curry's Store cor. of 3rd & D Sts. N. W. where he entered and remained about 15 minutes. When he

(2.)

came out I observed that he was reading a newspaper as they are sold at this store and probably purchased the paper there. He walked to opposite cor. of 3rd & D Sts. N. W. and continued to read said paper then proceeded back up D St. towards Court House reading paper walking very slowly. At 4th St. he stopped reading and dropped the paper against a house next to corner and walked very slowly over Court House grounds smoking cigar and entered said Court House.

At 3:15 subject came out in company with other jurors and they all had their picture taken at 315 John Marshall Place on the steps. Subject in company with two other jurors then walked east on D St. and stopped at the little plaza at 3rd & L Sts. where subject left other two jurors as they entered a Ford Coupe. Subject proceeded to his car and drove same to Somerville's Brass Works at 13th & D Sts., arriving there at 3.50 P. M. where he remained until 5.30 P. M.

(3.)

He then drove his car to his house 1013 Eighth St. N. W., and entered remaining until 8.15 P. M. when he came
253 out with two women and another man and they all got into subject's car and drove slowly down thru Potomac Park and suburbs until 9 P. M. they parked their car on 11th St. above F N. W. and proceeded to Lowe's Columbia Theater where they entered to see the picture of "Beau Guest." They all came out including subject at 11 P. M. and entered car and drove back to subjects home, 1013 Eighth St. N. W.

I returned to the hotel at 11.30 P. M. and discontinued for the day.

(And there appears on the reverse side of this report, in blue pencil, the following:)

Expenses:

Room	$5 00
Bkfst.	75
Dinner	1 00
Supper	90
Midnight Lunch	50
Theatre	75
	$8 90
	4 76
	$13 66

1½.
Mileage: (28 miles.)"

"GOVERNMENT'S EXHIBIT No. 221."

"#10. W. S. B.
Re. #10.
N. Y. Operating #—.

N. Y. Inv. M-20 Reports:

Washington, D. C., October 20, 1927.

I left my quarters at 8.30 a. m. & after having Breakfast I proceeded to the vicinity of the Court House on D St. & John Marshall Pl. N. W.

At 10 a. m. my Subject along with the 11 others was in the Jury Box. I got my designation through a hall window.

At about 12.45 P. M. recess was declared. My subject took lunch in a nearby restaurant, then he sat on the court steps for 15 minutes & at 1.15 P. M. he was back in the 'Box.'

Shortly after 3 P. M. the Subject & the other jurors left the court house & posed in a group for newspaper photographers, on the corner of D & John Marshall Pl. N. W.

The Subject and another one of the jurors then walked

II.

a block and at 4st & D N. W. they entered a small coupe, which the other man drove—License #17521 Dist. Col.

1927. I believe this auto is owned by the American Ice Co.

254 I could not get a taxi in the neighborhood, and so the subject got away.

I went immediately to #617 14th St. N. W. hoping to find the Tire Vulcanizer where it is said the subject is employed. At this address I found the Federal American National Bank—and Stores what I was seeking was not there.

I then went to the vicinity of #1408 Franklin St. N. E. I found a two story, cheap looking frame dwelling with a small garage in the rear. This is typical country, one side of the street is like a forest, there is a mud road and only two other houses on the block.

The subject's house is practically impossible to cover.

I remained in the near vicinity until 9.50 P. M. & as I did not see the Subject again I returned to my room and discontinued for the day.

I was in touch with N. Y. Inv. 041 today & Mgr. C. R. M. 20.

Expenses:

Subsistence Room at Wash. Ht. & 3 meals	$8 00
Carfares	32
	$8 32

There is nobody other than myself covering this Subject at present.

1½."

"GOVERNMENT'S EXHIBIT No. 222."

N. Y. Opp. 03 reports:

Thurs., Oct. 20, 1927.

"Continuing on above case I left Hotel at 8 a. m. and proceeded to subjects home where I kept same under surveillance, at 9.15 a. m. subject came out and walked to 13th & E. Capitol where he took a car marked 'Cabin John.' I took car following until I saw taxi coming along and hailed it. I caught up to car subject was in and followed it to the Court House. Subject got out and entered same at 9.45 a. m. I discharged cab and waited until subject

came out for lunch period. At 12.45 Subject in Company of Juror #11 came out and walked down D St. to 6th, up 6th to E and along E to 5th St. where they went into 'Watts' restaurant on the corner. I kept surveillance of vicinity until subject came out at 1.10. In com/any of Juror #11 they walked to the Court House and sat on the steps until 1.25, when they got up and went into court. At 3.05 Subject came out again and walked across to Marshall & D Sts., where along with the eleven other Jurors, he posed for photographs. At 3.20 Subject in company of Juror #11 walked up D St. to 3rd and entered a Ford
255 Sedan License plate F-37-39. The car was driven by Juror number eleven. They left at 3.25 p. m. unable to get a taxi I boarded trolley and proceeded to Subjects home. Where I kept surveillance until 9.45 p. m. and not seeing subject come out I left vicinity and returned to Hotel. I saw no one of any suspicious nature in vicinity of subjects home. But covered same from different places and kept considerable distance away at all times.

Expenses:

Room & Meals	$8 00
Taxi & Tip	75
Carfare & Tele	50
	$9 25

Time —."

"GOVERNMENT'S EXHIBIT No. 223."

"C. G. R.
"#014.
"N. Y. #5023.

Thursday, 10/20/27.

Continuing on the above operation at 12.01 a. m. I remained in company with Mgr. C. G. R.

At 2.45 a. m. I engaged a room at the Mayflower Hotel and temporarily discontinued on the operation.

At 8.20 a. m. I resumed my work as assistant to Mgr. C. G. R. in the capacity of contact man and continued as such until 12 Mid-night at which time I discontinued for the day.

(And there appears on the reverse side of above report the following:)

Meals	3 45
Phones	.55
Taxis	1 65
"	1 35
"	2 40
Hotel	5 00
Gratuities	45
	$14 85

"Time —."

"GOVERNMENT'S EXHIBIT No. 224."

"Cable: Mayflower. Telephone: Main 9800.
#9.

The Mayflower,
Washington, D. C.

Philadelphia Investigator 870 Reports:

Washington, D. C., Thursday, October 20th, 1927.

Continuing on the above operation at 8 a. m. I left my hotel and proceeded to the Court House, after a long
256 wait in line, I was admitted, I immediately spotted my subject #9, I remained in Court until noon recess.

I kept my subject under surveillance during the recess, taking him to the Court House Coffee Shop, he sat alone and conversed with no one, I paid particular attention to learn if he was being kept under surveillance by a second party, but am sure he was not.

(2.)

When Court adjourned for the day, he and other members gathered at John Marshall Place and D Street—when they were photographed.

Subject then walked south on John Marshall to Pennsylvania Avenue, west on Pennsylvania to Ninth, north on Ninth to F Street proceeding along F Street, where he

stopped at a Drug Store (just opened) between 13th and 14th Sts., he later entered an office building but came right out.

He then proceeded to 16th and Pennsylvania where he stopped and talked with cable splicers employed in a manhole, he later entered the Man hole and remained there about 20 minutes, coming out he was joined by two other workmen and the three conversed on the corner for several minutes.

Subject later walked to 14th and Pennsylvania where he made ready to board a Rosslyn Street Car, as I had been giving him a "long spot" for the purpose of ascertaining if a second party had him under

(3)

surveillance, I was so located that I could see him board his car alone, and I then hastened to 16th Street where I boarded the car being the only passenger to board car at this point, making it impossible for a second party to be shadowing without my knowledge. At Pennsylvania and H Street intersection subject left the car, having a clear view of subject at all times I alighted at the next corner, and continued to keep subject, (who was engaged in conversation on the street corner) under strict surveillance. Subject entered this corner drug store and took a seat at the fountain, where he was engaged in conversation with a young lady soda dispenser for about 45 minutes.

At 6.30 P. M. he left the drug store and went directly to his home.

(4.)

I called Mgr. C. G. R. for the purpose of letting him know I had subject at home, then returned to keep his home under surveillance.

At 7.30 P. M. subject came out of the house in his shirt sleeves and tinkered with a Ford Roadster bearing D. C. License M-2092, he then reentered the house and shortly after, the second floor front room lights were turned on and subject could be seen moving around.

Later the downstairs lights were turned on but subject could not be seen.

257 At 9.50 P. M. all lights were extinguished and although I waited directly in front of the house for several minutes there were no signs of life, feeling satisfied occupants had retired I returned to my Hotel and discontinued at 11.30 P. M.

Expenses:

Hotel	$5 00
Subsistance	2 50
Street Car Fare	.32
Telephone	.10
Hotel Valet ..	1 00
	$8 92

1½."

"GOVERNMENT'S EXHIBIT No. 225."

Special Report.

"Opr.

"Phila. Invstgr. S-71 Reports:

#5. Washington, D. C., Thursday, Oct. 20, 1927.

Continuing the above operation at 8:00 A. M. I proceeded to the Federal Court Bldg. where I remained in line to get into Court Room #2 where I got spot on subject #5.

At 12.50 P. M. Subject left the Federal Bldg. walked to the grounds of the National Museum where he stood under — ate a sandwich which he took from his pocket, then walked through the market house then back to court house arriving at 1.20 P. M. At 3.05 P. M. Subject came out of court and walked across the street where the jurors had their pictures taken on a step.

Subject then walked to 5th & G Sts. where he boarded a trolley and got off corner of L & Capitol St. and then walked to 60 L St. N. W. which is Topham's Truck Mfgrs.

(2.)

Subject entered this place at 3.40 P. M. At 5.10 P. M. subject left the plant with 3 men and got into a car and drove off I was unable to — license number of car nor could I get a taxi.

I then proceeded to vicinity of subject's home where I remained on watch for subject.

I did not notice anyone throughout the day nor in the vicinity of subject's home keeping subject under surveillance.

The subject not leaving the house by 10.00 P. M. I proceeded to my Hotel and discontinued at 11.30 P. M.

Expenses:

Hotel	5 00
Meals	3 00
Car fare	63
Telephone	20
	$8 83

1½."

258 "GOVERNMENT'S EXHIBIT No. 226."

"*Special Report.*

Washington, D. C., Thursday, Oct. 20th, 1927.

"N. Y. Operating #5023.

Philadelphia Investigator X-12 Reports:

Acting under instructions from Mgr. C. G. R., at 9 a. m. I proceeded to Court House and obtained designation on Juror #11—Herzog, Conrad J. of 36 N. Y. Ave. N. E. working at 920 Bladensburg Rd.

At noon recess subject lunched with Juror #1 at Watts' Restaurant—5th & 'F' Sts.

After Court adjourned and pictures were taken of Jury—subject entered his car, a Ford Sedan license #F-37-39, accompanied by Juror #1. There was no cab available to follow.

I then proceeded to subject's home and picked him up. He went back & forth to his garage four times between 4 P. M. & 9:30 P. M.

At 10:00 P. M. subject & middle aged woman drove to D & 9th to Chinese Rest. 'Hung Low,' after eating a meal returned home at 11.00 P. M.

As lights were out and subject had apparently retired, I discontinued 11.30 and returned to hotel.

Accompanying Mgr. C. G. R., I made the rounds collecting reports. Discontinuing at 12.00 Midnight.

Expenses:

Hotel	6 00
Meals	3 00
Taxi	13 50
	$22 50

1½."

Thereupon the witness was handed papers marked Government's Exhibits for identification 227 to 242, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 21, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.

The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

259 "GOVERNMENT'S EXHIBIT No. 227."

"N. Y Op. 5023.
Mgr. C. G. R.

Wash., Oct. 21/27, Friday.

Continuing on above at 12:01 A. M. I continued supervision of operation till 2 A. M. continuing at 8.20 A. M.

Met client during afternoon and again at 10.30 P. M.

Was engaged till midnight on operation. Called Phila. in connection with operation.

Hotel	6 00
Meals	3 85
Taxi Hire	4 80
Ldy.	1 20
L. D. Phone	2 60
L. Call	1 80
	$20 25"

"GOVERNMENT'S EXHIBIT No. 228."

"Phil. #—.
N. Y. B 4.

Washington, D. C., October 21, 1927.

Continuing on this case today, I left my hotel at Seven o'clock and went to the subject's home.

The subject came out and went to his place of business and then to the other place, where he entered at nine-forty. He came out at lunch time and entered the coffee-shop across the street.

Leaving there, he walked along Fifth Street to E and entered the man's toilet on the corner. Coming out of there he went to his place of business. He left there at six-ten and went home.

I remained in the vicinity but did not see any one enter or leave the house.

Leaving there I returned to my hotel where I discontinued for the day at eleven o'clock P. M.

Expenses:

Carfare	$ 32
Subsistence	8 00
	$8 32

Time (1½)."

"GOVERNMENT'S EXHIBIT No. 229."

"N. Y. Opt. —.

N. Y. Op. D9 Reports:

Washington, D. C., Oct. 21-1927.

260 Continuing on this case I left my Hotel at 7.30 A. M. and proceeded to the vicinity of subject's home

#2700 Connecticut Ave. and placed entrance of same under surveillance.

About 9.00 A M. Subject came out of the above address and boarded a trolley car and proceeded to the Court House where she entered about 9.45 A M.

About 12.50 P. M. Subject came out of the side door of the Court House accompanied by Juror #8. They both conversed for about 1 minute with 3 newspaper photographers and then entered the Main entrance of the Court House and went to the Ladies' Room. In a few minutes Subject and her companion Juror #8 came out of the Court House again and proceeded to the Court Coffee Shoppe, directly across the street where they entered and had lunch.

About 1.20 P. M. they came out of the Court Coffee Shoppe and walked to Castlebergs Jewelry Store, #1004 F Street, N. W., where they entered and remained for a short while. Upon leaving the above address they were accompanied as far as the street by one of the salesman who talked to them for a few minutes. They all appeared to be talking about an oil painting that was in the window as they all continued to look at same while talking.

Subject and her companion Juror #8 then walked to 13th & G Sts. N. W. where they separated. Subject then entered the Arthur Jordan Piano Co. Store located at the last mentioned address. The subject is employed by the company as a clerk. In about 10 minutes the Subject came out of the Jordan Piano Store and walked to 14th Street, where she boarded a trolley car and alighted from same in front of her home where she entered at about 2.50 P. M.

I continued surveillance in the vicinity of Subject's home until 10.30 P. M. and not seeing the subject again or not one loitering about the premises I left the vicinity and discontinued for the day at 11.00 P. M.

About 12.10 A. M. I received a telephone call from Mgr. C. J. R. to report at the Mayflower Hotel at once. I engaged a taxi and proceeded to the Mayflower Hotel when I had a conference with Mgr. C. J. R. I returned to my hotel for the day at 2.30 A. M.

Expenses:

Room & Meals	7.00
Carfare	48
Incidental cover on Surveillance	.25
Taxi to Mayflower & return to my Hotel	1.75
	$9.48

(1½.)"

"GOVERNMENT'S EXHIBIT No. 230."

Fri., Oct. 21st, 1927, Washington, D. C.

"Op. H4 Reports:

261 Acting under instructions from Mgr. C. G. R., I arrived at the vicinity of 1442 Fairmont Ave., at 7.15 A. M.

Fairmont St. runs only one block west of 14th St., where it then bends south, where it is known as University Place; it is a high class residential section, and as it is not much of a thoroughfare, very few use this section, except those who live here.

As I saw nothing of Subject up to 9.00 A. M. I concluded that he had gone unusually early to his shop, to get some work done before going to court.

I then proceeded to the 1212 New York Ave., but not seeing him there, I then proceeded to the court house, where I arrived just in time to see Costinett walking with a group of about eight others towards and enter the west door of the court house. I then discontinued operation until 11.45 A. M., when the jury came out at noon, I failed to see Costinett, this may be due to fact that he may have gone to the north and rear of the court house when he came, not with the rest of the jury, this was possible, as I was standing in a doorway of a cigar store in D St., where I had the best cover and would cause the least suspicion. Or he may have gone out some other way, as I have been informed that Costinett is well known at Court and I have been told that he has served on at least 12 juries in about 2 or 3 years.

As I did not see the jury return by 1.15 P. M., I made some inquiries, and I was told that the trial would continue

this afternoon, but that the jury had been excused until Monday morning.

I then proceeded to the vicinity of 1212 New York Avenue.

The two men that watched here as described in yesterday's report did not appear in this vicinity today.

But upon my arrival, I saw a tall well built man of 6 feet in height, or a trifle over. He work a dark blue suit, a grey soft hat, and black shoes. He weighed about 175 lbs., medium complexion, dark hair, and his face had regular features, except his nose was a little large looking, age about 28 years, smooth shaven. He stood at the northeast corner of New York Ave., and 12th St., up to 2.30 P. M. Several times he walked away going north on 12th Street, and returning again in about 5 minutes.

At 2.10 P. M., when he went away for a few minutes, I took a trip past Costinett's shop, and looked in. I noticed Costinett in the rear part of the store sitting down to what looked like a table. I did this quickly so as to not attract attention.

At 3.00 P. M., another man who was about 35 years old appeared at the northwest corner of 12th St., and New York Ave. He was about 5 feet 8 inches tall, well built about his shoulders, thick neck and his face was slightly large featured, prominent nose, medium complexion;
262 hair inclined to be sandy. Wore light gray suit, light gray hat, and yellow shoes, smooth shaven. He remained standing on that corner until 5.00 P. M. looking around in every direction, at 5.00 P. M., he proceeded west on New York Ave., to 13th St., and entering a confectionary store at 13th near H St., where he bought a newspaper, then proceeded west on H St., and out of sight.

At 5.40 P. M., the tall man again appeared and stood in the 1200 block New York Ave., just at the rear end of the Masonic Temple. He remained here about ten minutes, then disappeared in the direction of 13th & H St.

At 6.00 P. M., Costinett came out of his store and proceeded down the alley adjoining his shop towards H Street.

I tried to head him off by going from New York Ave. to 13th and H St., but could not see him. I thought it unwise to go down the alley after Costinett, thinking that they might be using the alley as a trap.

I then proceeded to the vicinity of 1442 Fairmont Ave., in front of Costinett's home was a large sedan, license No. "P. 1219, D. C.," it was a green covered machine, with an extra tire at the back. It looked like a newer machine than the one that stood here last night, which was license No. "P. 1220 D. C." It seems strange that these license numbers are so close together.

At 7.15 P. M., I saw a man of about 25.27 years old; about 5 feet 8 inches tall; weight 150 lbs; full round face, smooth shaven; dark complexion; dark eyes, face inclined to be a little chubby, athletic build; wore dark blue suit and a gray cap.

He appeared coming north on 14th Street, I recognized as having seen him about the court grounds where he attracted my attention, because he looked around so much, and I watched him for a while and he aroused my suspicions most when he walked around a block twice in the rear of the court house constantly looking around.

He stopped at 14th and Fairmont and looked around for about 10 minutes, then he walked west on Fairmont and stopped when Fairmont St. turns into University Place; where he stopped for a few minutes, then returned to 14th & Fairmont Ave., again, where he again looked around for a few minutes, then he walked north on 14th St., and passed out of sight.

During the day at about 5.00 P. M., I noticed the one of the men who watched around New York Ave., yesterday, and whom I described at 55 years old, pass down 14th Street. Today I happened to be at the corner of New York Ave. & 13th Street, when I happened to glance towards 14th St. when I saw this individual going down 14th Street. He did not show up at all today around the 1200 block New York Ave.

Tonight I kept up my surveillance at 1442 Fairmont St., until 11.30 P. M., when operation was discontinued.
263 At midnight I was called up by Mgr. C. G. R. and ordered to discontinue operation.

Expense:

Room rent	$2.50
Subsistence	2.25
Carfare	.48
Total	$5.23

"GOVERNMENT'S EXHIBIT No. 231."

Balt., K. 1.
"Washington Operation Case No. —.

9/21/27.

In continuation of this operation I arose at 6:30 a. and on finishing breakfast boarded a street car and went to the vicinity of subject's home 1104 Four and one half St. arriving there at 8.10 a. m. I took up surveillance a block away.

At 8.45 a. m. Subject Chas. Holt came out of the house in his shirt sleeves and entered a store in the 1000 block after remaining a few minutes came out and returned to his home at 9.15 he again came out with his coat on and boarded street car went to Missouri Ave. and 4½ Sts. got off walked through John Marshall Place to Court stood on Portico until 9.45 when he entered Courthouse; at 12.50 P. Subject came from Courthouse went to 6th & D Sts. entered Restaurant accompanied by another juryman at 1.15 P. Came out went back to Court and entered at 1.18 P. at 3 P. Subject came out again, of Courthouse went through John Marshall Place to 4½ St. and boarded a car at Missouri Ave. got off at L St. and 4½ St., and at 3.22 P. entered his home 1104 4½ St. He was at no time trailed or connected with by anyone. I remained in the vicinity of his home until 11 P. when I decided to discontinue.
Balto. Opr. K-1.

Expenses:

Room at Hotel	$3.00
Meals	2.15
Incidental carfare	.45
	$5.60

(3½.)"

"GOVERNMENT'S EXHIBIT No. 232."

"*Special Report.*

"N. Y. Investigator K27 reports:

Washington, D. C., Friday, Oct. 21-27.

Continuing on above captioned matter pursuant to instructions received from Mgr. Ruddy, Left hotel at 7.30 A. M. & proceeded to vicinity of subject's home & took up surveillance.

Subject came out about 9.30 A. M. & boarded surface car at H & 14th and alighted at Court House D & 5th St. & entered court about 9.50 A. M.

264 At 12.45 P. M. Subject came out accompanied by Juror #7 leaving by side door & both re-entered Court through Main entrance.

Both came out a few moments later & crossed the Street entering the Court House Coffee Shop at about 12.55 P. M.

Both came out at 1.20 P. M. & walked to & entered Castelberg's Jewelry Store at 1004 F St. N. W., where they spoke to the following described man Age about 45 years 6' Heavy set 200 lbs. partly bald, (apparently the Manager). Entered at 1.35 P. M. & when leaving the store both subjects & man came to doorway & were looking at & discussing an oil painting in the window.

Both then continued walking to corner of 13th & G St. N. W. where Juror #7 entered Jordan's Piano Store alone & my subject continued walking to & entering the Chesapeake & Potomac Telephone Co. Bldg. at 725 13th St., N. W. at about 1.55 P. M.

Subject came out at 5.15 P. M. carrying a newspaper & was accompanied by the following described girl.

Age about 23 years 5'6" 120 lbs. Slender Built Dark Hair Tan Hat Blue Coat light colored stockings, black shoes trimmed with white leather.

As they came out the door subject's female companion spoke to the following described male.

Age about 25 years 5'9" 170 lbs. well built, dark hair grey hat, grey overcoat, blue suit, black shoes.

Subject & male & female companions walked north on 13th St. to I St., N. W., where subject left her 2 companions

& entered the Conard Delicatessen Store where she purchased a newspaper and then entered the building where she resides through the store at 5.20 P. M.

Came out at 6.15 P. M. & walked to O'Donnell's Drug Store, 1405 H St. N. W. when she waited in front of store until 6.30 P. M. when she was joined by the following described female.

Age about 25-27 years 5'6" 135 lbs well built dark hair Red hat, Tan coat. Both went to Picardis's Restaurant at 1414 H St. N. W., where they dined alone. Came out at 7.00 P. M. & both walked to & entered the Conard Delicatessen Shop in building & after subject purchased a newspaper both entered building where subject resides through the store at 7.10 P. M.

I maintained surveillance of subjects home up to 10.00 P. M., but did not see subject come out again up to this time, & being reasonably sure she was in for the night I left vicinity & returned to hotel discontinuing at 10.30 P. M.

K 27.

Expenses:

Carfares	.40
Meals	3.00
Hotel	5.00
	$8.40

(1½.)"

265 "GOVERNMENT'S EXHIBIT No. 233."

"Phila. Investigator K37 Reports:

Washington, D. C., October 21, 1927.

Continuing on the above operating.

At 8.00 A. M. I left my hotel and proceeded to the Court House and endeavored to gain entrance to the court room for the purpose of spotting my subject, but was unable to do so up to the close of the morning session.

I then proceeded to the side entrance of the Bldg. and kept same under close observation but did not observe the subject leave or enter up to 1 P. M.

279

I then remained in this vicinity until 3 P. M., at this time I proceeded to the vicinity of the subject's resident 36 New York Ave. N. E. and kept same under close observation.

At 4.05 P. M. the subject made his appearance driving a Ford Sedan painted gray, wire wheels, License #3739 and parked across the street from 36 New York Ave., and upon leaving car he entered this number.

I then observed a blue Buick Sedan with 3 men license #X2102 drive very slowly several times past the subject's residence, each time observing the subject's home and surroundings very closely.

At 4.25 P. M. the subject left his residence entered his car and drove off. I immediately engaged a passing taxi and proceeded to follow the subject circled through the N. E. section of the city and then drove N. W. without making any stops near the corner of N. W. 12th St. and N. W. E St. my taxi was delayed due to the heavy traffic, and upon following in the direction which the subject drove I was unable to see him, endeavoring to locate the subject I circled through this section of the city and was not able to locate the subject.

I then proceeded back to the vicinity of his residence.

At 6.15 P. M. the subject made his appearance walking towards his home, and entered.

I then remained in this vicinity until 10.30 P. M. and did not observe any one enter or leave the subject's residence, at this time the subject was preparing to retire.

As there was nothing further I could do on this matter writing of report's I proceeded to my hotel after writing this report discontinued on the above operation at 11.30 P. M.

Expense.

Meals	3.00
Room	4.00
Taxi	2.65
Carfare	.32
	11.47
	9.97

266 "GOVERNMENT'S EXHIBIT No. 234."

"*Special Report.*

Washington, D. C., Friday, October 21, 1927.

"Phila. Investigator L-36 Reports.

Continuing on the above case at 6.45 A. M. I took up watch in vicinity of subject's home in 1000 Block on Eighth St. N. W. and at 7.15 Subject came out of his home and entered Oldsmobile car District of Columbia Registration Q-5818 and drove to Somerville's Brass Works on 13th St. below D and entered. He come out at 9.50 A. M. and proceeded to Court House at 5th & D St. driving there in his Oldsmobile Touring Car.

At 12.55 P. M. subject came out of court house and entered said car and drove to his home at 1013 Eight St. and came out at 1.20 P. M. and drove back to Court House where he entered.

I took up watch again at 3 P. M. and not seeing anything of subject or his car I drove to his place of employment at Somerville's Brass Works 13th St. below D and his car was outside. I continued watch and at 5.25 P. M. subject came out and drove his car back to his home on Eighth St.

At 5.40 P. M. subject came out of his house and entered car with women and two children and proceeded to Monmouth, Md. about 22 miles S. E. of Washington, D. C., and entered the third house on right side of the road on entering Monmouth (main road) from —.

Subject remained here until 9.25 P. M. when he returned to his home in Washington, D. C. at 10.25 P. M. and woman and two children got out of car and entered subject's house also subject.

I remained in vicinity of subject's house until 10.45 P. M. and observed all lights out in his home and returned to hotel at 11.30 P. M. discontinuing for the day.

Expenses L-36:

Room	5.00
Meals	3.35
Mileage (78 miles) Storage of car 3 nights	3.00
	$11.35"

(1-1/2.)

"GOVERNMENT'S EXHIBIT No. 235."

"Re-10-1.
N. Y. Operating # —.
N. Y. Inv. M-20 Reports.

Washington, D. C., Friday, October 21, 1927.

Continuing on this assignment I left my room at 7.30 a. m. & proceeded to the vicinity of #1408 Franklin St. N. E.

267 I remained in the vicinity but could not keep the house under direct surveillance until 9.40 a. m. & failed to see my subject. I returned to my room arriving there at 10.10 a. m. & awaited the arrival of N. Y. Inv. O. 14.

I'm positive that there was no one covering the subject's house this morning other than myself.

After talking with Inv. 014 I went to the court house & watched for Jury #1 (Foreman) who I will endeavor to place under surveillance, I having been instructed to do this, and to discontinue on Jury #10.

It was about 1 P. M. when #1 came out of the court house in company with a man I believed to be #11. They walked to D & 4th St. & then got into a Ford car #F3739 Dist. Col. 1927. I could not get a taxi therefore could not follow the auto.

I visted Restaurants in the neighborhood but did — locate the Subject. I then returned to the place where the above mentioned car had been parked, and I waited until 2 P. M., the auto did not return.

Thinking that another parking space had been found, and that the Subjects had returned to court, I went to lunch.

At 2.30 P. M. I returned to the Court house, and I observed that the subjects were not in the jury box in the room they occupied this morning. After making the above observation I learned that a recess had been declared until Monday morning.

Immediately I went to the vicinity of #1315 North Carolina Ave., N. E., where the Subject resides.

At 7 P. M. the subject got out of a smart looking touring car & he dashed into the house. This car was high

powered it had either a brown or tan finish. All I could get of the license was the letter and the 1st 2 numbers "D-58."

I held the house under surveillance all evening.

At 8.10 P. M. a woman came out.

At 8.40 P. M. a boy came out (10 yrs. old) he got into Auto #N5259 Dist. Col. 1927 a girl who lives in #1317 North Carolina Ave. N. E. drove the car away.

During the evening I could hear some one working with a hammer in the Subject's cellar. As I did not see the Subject leave the house, and saw no one enter up to 9.30 I left the vicinity.

This subject is not being watched by any one else.

I think it would be wise to put a car on this subject. A man holding the house under surveillance must have some kind of cover. Taxi cabs are too conspicuous.

268 This subject uses automobiles and in order to cover him properly I must have a car & chauffeur.

At 11 P. M. I wrote this report and discontinued for the day.

M. 20.

Subsistence	$8 00	
Carfares	40	
Phones	20	To Mgr. C. G. R. & 014)"

16 hours. (1 1/2.)

"GOVERNMENT'S EXHIBIT No. 236."

"N. Y. Opp. 03 reports:

Fri., Oct. 21, 1927.

Continuing on above case I left hotel at 7.30 a. m. and proceeded to subject's home at 1315 No. Carolina Ave. N. E. Arriving there at 7.50 a. m. I kept vicinity under surveillance.

At 9.20 subject came out unaccompanied and took car toward City Hall. I followed in Taxi as far as Court House, where subject got off at 9.45 and went inside. Under instructions of Mgr. C. G. R. at 12.45 when subject's came out I gave spot on my subject to M, who in turn gave me a spot on Juror Goucher #10. I followed same up D St. to 6th. He turned here and went down to Pennsylvania Ave.,

and stopped in the Benedict Resturant. He came out again at 1.20 and went directly back to Court House. I kept surveillance of court house until 3.00 and not seeing subject come out I proceeded to his home at 1408 Franklin St. N. W. His home is in the suburb's and there is absolutely no cover to keep same under surveillance, without the use of a car. Under the circumstances I covered vicinity as best possible until 10.30 p. m. And not seeing subject I left vicinity and discontinuing for the night at 12.00 received telephone call from Mgr. C. G. R. to meet him at Mayflower Hotel at once. Took taxi and arrived at 12.20.

Expense:

Room & meals	8 00
Taxi & Tips	75
Carfare & Telephone	50
Taxi to & from Mayflower Hotel	2 00
Total	$11 25"

(1½.)

"GOVERNMENT'S EXHIBIT No. 237."

Friday, 10/21/27.

C. G. R.
"=014.
N. Y. =5023.

Continuing at 12.01 a. m in the capacity of contact man as assistant to Mgr. C. G. R. I resumed the duties assigned to me.

I temporarily discontinued at 1.20 a. m.

I resumed my duties at 8 a. m. and continued on
369 same until 12 midnight at which time I discontinued for the day.

Meals	4 75	
Taxi's	1 35	
"	4 90	
"	.90	
"	1 15	
"	1 35	
"	2 45	
"	90	
Hotel	5 00	
Phones	1 75	L. D.
"	1 35	Locals.
Gratuities	65	
	$26 50"	

"GOVERNMENT'S EXHIBIT No. 238."

C. G. R.
"#014.

Subject: Chas. E. Burr.

Friday, 10/21/27.

Acting under instructions from Mgr. C. G. R. I made an investigation of Chas. E. Burr.

He is 25 years of age, married and has one child.

He lives at the address 1749 18th St. N. W. a 3 story red brick house owned by his mother-in-law, one Mrs. F. A. Hunt.

Subject is employed by A. Cafritz Co. 1400 K St. as a salesman on a straight commission basis and has been so employed about two months time.

Inquiry here tells me that subject has represented five different real estate concerns in the past year associated with all on a straight commission basis.

Cafritz Co. know little about the subject being that he is a commission man only but consider him worthy of being one of their representatives.

Inquiry in the subjects home neighborhood informs me that his mother-in-law Mrs. Hunt stands a large amount of the running expense of the house as the subject contributes little if anything towards these items.

The general impression of the tradespeople near his home is that he is living considerably above his means. They refer to various trips made to out of town points by him and only recently one was made to Atlantic City covering a period of three weeks incurring considerable expense and they wondered why and how considering that Burr did not enjoy any income from any source known to them.

Burr is in possession of a Chevrolet Coach license #P993. I was unable to obtain any information as to whether this car was purchased for cash or on a time and credit
270 basis. This is all that could be obtained at this time.

No time.

No expense."

"GOVERNMENT EXHIBIT No. 239."

"On the letterhead of the Raleigh Hotel:)

Burr.

"Philadelphia Investigator 870 Reports:

Wash., D. C., Friday, October 21, 1927.

Continuing on the above operation I left my hotel at 7 A. M. and proceeded to the vicinity of subject's home arriving there at 7.45 a. m., subject appeared at 8.40 and proceeded to Pennsylvania and H St. where he boarded a Union Station Car, leaving the car at 6th & Pennsylvania Ave. walking directly to the Court House where he remained on the steps for several minutes before entering. I then returned to my Hotel to submit reports and returned in time to cover my surveillance.

I was instructed to turn my subject over to Phila. Investigator S 71 and place his subject under surveillance. At noon recess, I picked up my new subject and covered him to Central Market where he had a light lunch at Rock's lunch room.

He hastened back to the Court room and I went for lunch, at 3 P. M. I was advised that subjects had been dismissed over the week-end.

I accordingly called subject's place of employment using a suitable pretext and was advised he was no longer employed there, being employed at 80 L Street, N. East, calling this place I again used a suitable pretext and was assured he was there.

I proceeded there at once, and covered this place until 4.50 P. M. having been advised that subject might use a car I chartered a cab and awaited subject's appearance. At 5.25 P. M. subject emerged in company with 3 other men and entered a Pontiac Sedan bearing D. C. License Plates H-949, I followed using the chartered cab and subject took a round about way leaving off two passengers at different points. He was later driven to the corner of 11th & V Street, S. E. where he alighted, I had my cab wait at the corner while I took him to his home, I later returned and dismissed my cab, Diamond Cab License #1705 driver number 430, Subject's home being the third house from the end I was forced to take up a position in the woods, when it got real dark it was unable to cover subject's house from this point.

As this section and street is thinly populated and an old neighborhood I was forced to cover subject's house from 15th & W Street corner brushing by his house occasionally. Subject resides in a double frame house, people residing in other half were moving in or preparing to move out, as there were no curtains. I was in a position to look
271 all thru this half and on several occasions subject was seen to appear on the front porch and converse with members of the adjoining house.

I saw subject for the last time at 8.50 p. m. from that time on I covered the house from a position directly across the street but did not see subject.

At 10 P. M. I called Asst. Mgr. G. H. R. advising him subject apparently had retired as there was but one light in the living room I returned to my hotel and discontinued at 11.50 P. M.

Expenses:

Hotel	$6 00
Telephone	20
Street car fare	32
Subsistence .	2 50
Taxi hire following subject	4 80
Gratuity to driver	50
	$13 32"

(1½.)

"GOVERNMENT'S EXHIBIT No. 240."

"*Special Report.*

Opt. —.

Phila. Instgr. S 71 Reports:

Wash., D. C., Friday, October 21, 1927.

Continuing the above operation at 6.30 a. m. I proceeded to the vicinity of subject's home 1600 Block on U Street, where I remained on watch for subject.

At 7.15 subject left his home and proceeded to car line took same for his place of employment 60 L St. S. E.

Subject left this place at 9.25 a. m. and boarded a car got off at 5th & F Sts. walked to the court house.

At 12.55 P. M. according to instructions received from Mgr. C. G. R. I picked up subject #9 who went to a small restaurant on 5th St. across from court house then walked around the block into the court house through the main entrance.

At 3.00 P. M. I was informed that Court had been adjourned and that my subject had left.

I then proceeded to the vicinity of subject's home 1916 H St. where I remained on watch for subject.

At 4.15 P. M. subject arrived home and entered house.

I remained on watch until subject retired and all the lights were turned off at 12.30 A. M.

I then proceeded to hotel and discontinued at 1.00 A. M.

Expenses:

Car fare		72
	Hotel	5 00
272	Meals	3 00
	Taxi	65
Telephone		20
		$9 57"

(1½.)

"GOVERNMENT'S EXHIBIT No. 241."

W. S. B.
"New York Operating—.

New York Investigator S-81 Reports:

Friday, Oct. 21, 1927.

Acting under the instructions of Principal W. S. B. at 10:00 A. M. I made arrangements to proceed to Washington, D. C. I boarded the 3:25 P. M. train and proceeded to destination arriving at 8.50 P. M. During the evening I got in touch with Mgr. C. G. R. and New York Investigator O-14 and received data on case.

At 11.00 P. M. I registered at the Pennsylvania Hotel. I incurred an expense of $1.40 for a taxi, covering the trip from the Wardman Park Hotel to mine. At midnight I wrote this report and retired. S-81.

Expenses—R. R. Fare	10.02
Supper on train	1.50
Taxi	1.40
Hotel Porter & train porter	.50
Hotel	4.00
Carfare & Phone	.28
	$17.70

(1½.)"

"GOVERNMENT'S EXHIBIT No. 242."

"*Special Report.*

"New York Operating #5023.

Phila. Investigator X-12 Reports:

Washington, D. C., Friday, October 21st, 1927.

Continuing on above operation at 12.01 a. m. I carried out various duties assigned me by Mgr. C. G. R. discontinuing temporarily at 2.00 A. M.

At 8.30 A. M. resumed operations preforming various duties assigned me—as well as purchasing supplies for turning out reports daily & keep accounts of operation.
Temporarily discontinued 12.00 midnight.

Expenses:

Hotel	6.00
Meals	3.50
Laundry	1.00
Taxi	4.20
	$14.70
Supplies	7.90
	$22.60

(1½.)"

(Attached to the back of this exhibit are three
273 pink cash register receipts in the amounts of $6.20, $1.60 and .10, respectively, all of said slips being dated Oct. 21, 1927, and bearing the name R. P. Andrews Paper Co.)

Thereupon the witness was handed papers marked Government's Exhibits for Identification 243 to 258, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 22, 1927 which were sent to Sherman Burns on October 29, 1927.
Thereupon the following occurred:

Mr. Crim: The same objection.
The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 243."

"N. Y. Op. 5023.
"Mgr. C. G. R.

Wash., Oct. 22/27. Saturday.

Continuing on above at 12.01 A. M. I discontinued at 2.45 till 9 a. m.
During the day was engaged in conference with clients

and conducting the investigation till 11 P. M. I called Principal W. S. B. at 11.39 a. m.

Hotel	6.00
Meals	3.85
Taxis	4.20
L. D. Phones	8.30
	$22.35"

"GOVERNMENT'S EXHIBIT No. 244."

"Phila #—.
N. Y. Inv. B4

Washington, D. C., October 22, 1927.

Shortly after midnight, after rendering my report for the previous day, I was called, by telephone, to report at the Mayflower Hotel immediately.

I hired a taxicab and went there. I was instructed to accompany Investigator O 3 on the following morning to assist him in picking up his subject, Goucher No. 10.

Accordingly, I left my hotel at six o'clock in the morning and met N. Y. Investigator O3. I hired a taxi-
274 cab (follows ten or more undecipherable words, blocked out) and we started for the subjects house at six thirty o'clock.

The subject came out of his street in a Ford delivery wagon, such as is used by gasoline stations and tire shops. The license number of the car is B 4731. The subject drove to his place of business. Investigator O 3 then telephoned to Manager C. G. R. for further instructions. Manager C. G. R. told him to advise me to return to my hotel and remain there until called. I paid the cab driver for the two hours, since it was then eight-thirty, and then left the cab with the investigator O 3. I returned to my hotel and waited there until five o'clock P. M. at which time I was instructed by telephone to go to the vicinity of the home of Balt. inv. K1's subject and to relieve Baltimore Inv. 1; when I got there, I found that this investigator had rented a room from the window of which he could watch the subject's house. We waited until nine thirty and then, when the subject did not appear, I telephoned to F. J. G. and ex-

plained the situation to him. He instructed me to discontinue and leave Baltimore Investigator K-1 there. I then rejoined this investigator and advised him of the instructions which I had just received. I left him and returned to my Hotel where I write this report. The report finished, I shall bring it to F. J. O. at the Mayflower Hotel.

Time—.

Expenses:

Taxi to Mayflower preceding night	$1.95
Subsistence	8.00
Taxi bill in morning	3.00
Taxi fare to 4½ Street	.75
Carfare	.16
Telephone	.10
	$13.96"

(1½.)

"Government's Exhibit No. 245."

Mr. W. S. B.

"N. Y. Opt. —.

"N. Y. Op. D-9 Reports:

Wash., D. C., Oct. 22, 1927.

Continuing on the above matter I held myself in obeyance at my hotel at 7.00 a. m. as per instructions of Mgr. C. G. R.

At 10.20 A. M. I received a phone call from N. Y. Inv. M. 20 to join him in the vicinity of the Holmes Bakery #107-F St. which I did. I also met Op. S-81 in this vicinity. I was to be given designation of Subjects #1 brother who is also supposed to be employed at Holmes Bakery.

About 11.00 A. M. I was given designation on a man by N. Y. Op. M-20 who was assumed to be Subject #1 brother. This man was driving a Lincoln Touring Car #Q7-877. It was about 1.30 P. M. after having a conference with N. Y. Op. O-14 that I learned that the man was not Subjects #1 brother.

275 I remained in the vicinity of Holmes Bakery until 8.30 P. M. at which time a man came out of the bakery whom Op. M-20 thought was his subject and entered a Chevrolet Coupe License 89-859 and drove away.

I then proceeded with N. Y. Ops. M-20 & S81 to 13th St. & North Carolina Ave. and took up surveillance at Subjects #1 home.

At 9.10 P. M. the subject of M-20 and an elderly man and two other men alighted from a Hudson Sedan License G2-462 and entered subjects home. We were not close enough to get a good look at these men. About 10.15 P. M. some people came out of Subjects home entered the Hudson Sedan and drove away.

At 11.00 P. M. we left the vicinity of Subject #1 and proceeded to the Mayflower Hotel and after receiving further instructions from N. Y. Op O-14 I returned to my Hotel and discontinued for the day at 1.30 A. M.

Expenses:

Room & Meals	7.00
Carfare	.32
Phone	.20
Incidental Cover on Surveillance	.65
	$8.17"

(1½.)

"Government's Exhibit No. 246."

Sat. Oct. 22nd, 1927.
Baltimore, Md.

"Op. H. 4.

Report.

Acting under instructions from Mgr. C. G. R. I left Washington and returned to Baltimore, by B. & O. R. R. at 8.15 A. M.

Expenses

Breakfast	.50
Railroad fare	1.44
Total	$1.94

½ day."

"GOVERNMENT'S EXHIBIT No. 247."

"Washington Operation Case No. —.

1/22/27
Balt K-1.

In continuation of this Operation I arose at 6.30 A. M. and on finishing breakfast boarded a street car and proceeded to the vicinity of 1104 — 4½ St. S. W. the home of subject Chas. Holt arriving there at 7.45 A. M. I took up surveillance & finding it useless to try keep up same from street I went to a nearby rooming house, situated at 1013 4½ Street and secured a room where I could shadow under cover and in the very close vicinity of his home, at 10.45 A. M. subject came out and stood on corner chatting with several male neighbors at 12 M. he entered his home again at 1.15 P. M. he came out and crossed to opposite corner and watched some carpenters putting in new store front at
2 p. m. he purchased magazine from corner druggist
276 and entered his home at 3.45 p. m. came out on side-
walk again and remained until 5 p. m. and again entered his home at 6 p. m. I met Opr. Breman and was informed that he was sent for me to give a spot of subject to him but at 9 P M the subject had not showed himself again and after Opr Brennan had called Mr. O'Reilly he left me. I remained until 11 P. M. and lights were out and not having saw subject I discontinued.

Balto. Opr. K-1.

Expenses:	9/22/27.
Room at hotel and means for 1 day	$ 7.00
Room at 1013 Four and one Half St.	4.00
Carfare & Incidentals	.75
	$11.75

"Balto. Opr. K-1.

P. S.—I rented this room so as to shadow under cover as it is impossible to do so from the street as there is a very inquisitive set of people living in this neighborhood and it is a hard boiled one at that and it would not be many hours before you would be picked up by Police to give

some explanation as to your continual presence in this neighborhood and I did this for all the best interests concerned.

Kirby—(1-½.)"

"GOVERNMENT'S EXHIBIT No. 248."

"*Special Report.*

S.71 "(1.)
"Opt. #—.

N. Y. Investigator K 27 reports:

Washington, D. C., Saturday, Oct. 22-27.

Continuing on above captioned matter pursuant to instructions received from Mgr. Ruddy at 1.00 A. M. at his hotel receiving new instructions regarding my keeping juror Kidwell under surveillance.

Left my hotel at 6.30 A. M. accompanied by Phila. Opr. Sullivan & proceeded to subjects place of employment at 80 L St. N. E., where I was to receive designation.

At 8.30 A. M. Opr. Sullivan showed me the Pontiac Sedan, D. C. License U1-949 as it stopped opposite the factory.

At 9.00 A. M. when Opr. Sullivan did not see subject enter, he phoned the factory & was informed that subject was in the factory.

Opr. Sullivan then left me & I continued surveillance of factory in order to pick up subject from partial description.

At 11.30 A. M. per instructions I engaged a cab "#H-1262" & placed same in waiting on 1st N. E.

At 12.30 P. M. I noticed a young man in a Grey suit & grey cap about 19 years of age come out of factory & walk to corner of L & 1st N. E. & look over the cab & then
277 returned to factory. I also noticed at this time a man who stood directly opposite the factory & who appeared to be about 40 years of age 5'6" 140 lbs. wore black Felt Hat Blue Coat & Brown Pants, appeared to be a laborer.

At 1.00 P. M. about 8 men came out of the factory & 4 of them walked to the Pontiac Car & I noticed one of them answered to partial description of subject as given to me, & this man spoke to the above described man who walked

away. At this juncture the 4 entered the Pontiac & rode off E on L St. & I followed in cab to about 11th & G Sts. N. W. where I lost car in which subject was, in traffic.

Description of man whom I took for subject. Age about 31 years 5' 10" Medium Built Thin Face Wore Gray Hat Blue & White Band a sort of Brown Coat & Blue Trousers.

I then phoned Manager Ruddy.

I then received further instructions, & proceeded to vicinity of subjects home at 1637 U Street, S. E.

"*Special Report.*

(3.)

"Optg. ≡—.

"N. Y. Investigator K-27 reports:

Wash., D. C., Sat., Oct. 22 27.

Where I took up surveillance of subjects home, a 1 family frame dwelling recently painted Yellow trimmed with White & with a wooden fence painted green.

I looked around the premises but saw no signs of the man I saw leave the factory in the Pontiac car.

I did not see any signs of any male person enter or leave the house up to 6.00 P. M. but did see a woman at the window, & a girl about 13 years of age enter & leave the house.

After it got dark I had difficulties in noting, weather or not, any male person entered or left the house, & after remaining in vicinity until 11.30 P. M. & not being able to distinguish features in the dark, I left the vicinity as I did not see the same man I saw at the factory, in face I did not see any male person enter or leave up to this time, so I returned to my Hotel & discontinued at 12.00 P. M.

K. 27.

Expenses:

Carfares	48
Phones	20
Meals	3 00
Hotel	5 00
Taxi Hire	3 85
	$12 53

H. 1262.
(1½.)"

278 "(On letter-head of Hotel Pennsylvania, Washington, D. C.:)

October 22, 1927.

"Phila. Investigator K-37 Reports:

Continuing on the above operation at 12.30 A. M. I left my hotel and proceeded as instructed and reported to Mgr. C. G. R. and upon my arrival back to my hotel, at 2.30 A. M. I discontinued operation until 6 A. M.

At 6.30 A. M. I left my hotel and proceeded to the vicinity of the subject's residence and kept same under close observation.

At 8.15 A. M. the subject left his home and entered his car which was parked in front, and drove off having a taxi at my disposal I followed the subject to the Northeast Motor Co. 920 Bladensburg Road, N. E. and upon his arrival he parked his car and entered the Bldg.

At 10.20 A. M. the subject left the garage and drove direct to his home arriving there at 10.30 A. M.

At 10.45 A. M. the subject and a middle aged woman left his home, and drove off. I then engaged a taxi and proceeded to follow, as several minutes had elapsed after the subject left, before I obtained the taxi, and following in the direction which the subject drove, I was unable to locate him or his car.

I then proceeded back to his residence, at 12.45 P. M. the subject arrived alone, and remained 10 min. then drove off I then proceeded to follow in a taxi, but was separated from the subject due to an inexperienced driver. I then proceeded back to his home. At 3.50 P. M. a Ford Sedan License #T70242 Va. driven by a tall heavy set man and the woman who the subject left with, drove up, they both entered the subjects home.

At 4.05 P. M. this man entered his car and drove off. I then engaged a taxi and proceeded to follow, he drove direct to the subject's place of business and parked, later entering the bldg. and conversed with several of his help.

I then proceeded back to the vicinity of the subject- home, at 6.05 P. M. the subject arrived in his car, and entered his home.

At 8.05 the subject entered a taxi which had been called by phone and drove off as there was no taxi available I could not follow.

At 9.00 P. M.—two young girls and two men entered the subjects car and drove off. As there was no taxi available at this time I could not follow.

I then remained in this vicinity until 11.30 P. M. and did not again observe the subject or his car. At this I proceeded to my hotel and after writing this report, dis-
279 continued on the above operation at 12.30 A. M.

Expenses:

Meals	$3 00
Taxi fares total	5 80
Car fare	48
Room	4 00
	$13 28

(1½.)"

"GOVERNMENT'S EXHIBIT No. 250."

"*Special Report.*

"Phila. Investigator L-36 Reports:

Washington, D. C., Saturday, October 22nd, 1927.

Continuing on above operation I took up watch in vicinity of subjects home 1013 Eighth St. N. W. at 7 P. M. and at 7.25 P. M. subject came out of house and entered his car and drove to 14th and C Sts. where he parked his car and walked to Somerville's National Brass Works at 13th & D Sts. and entered. He came out at 12 noon and drove his car to his home and I noticed a Chevrolet Coupe with District of Columbia Registration U 292 following subjects car to his home. Subject came out at 12.30 and drove back to his place of employment and at 1.15 I noticed said Chevrolet Coupe in vicinity of 13th and D Sts. At 3.20 P. M. subject came out of his place of employment and drove to his home and I observed an Oakland Roadster with District of Columbia Registration P 1738 following the subjects car. At 3.40 P. M. subject and his wife and children entered the car and drove to the Potomac

Flying Field and I followed. When subject's car arrived there I noticed that the Oakland Roadster, District of Columbia Registration P-1738 was there ahead of subjects car and I observed a man about 5 ft. 9 in. tall slender built 150 lbs. ruddy complexion shabby blue suit, old brown shoes, dark brown balmacan coat and same colored cap on, the coat and cap of a shabby appearance.

This was the man I saw driving the Oakland that followed subject home and here he was again at flying field ahead of subject when latter arrived.

The subject and this man were in conversation for about 20 minutes and then said man entered the Oakland Roadster and drove away. Subject remained until about 5.10 P. M. when it began getting dark, and then drove to his home. I took particular notice as to if any car was following the subjects car and did not see any.

The lights downstairs were extinguished at 9 P. M. and switched on up stairs until 9.15 and subject did not go out all evening. I returned to the hotel at 11.30 and discontinued for the day.

L.36. October 22. 1927. L.36.

Expenses:

280	Room	$5.00
	Meals	3.20
Telephone		.50
Automobile Trailing		15.00
		$23.70"

"GOVERNMENT'S EXHIBIT No. 251."

"#I.

"N. Y. Opt. #

"N. Y. Inv. M-20 Reports:

Washington, D. C., Oct. 22, 1927.

In response to a phone call received in my room at 12.15 A. M. and as per instruction I engaged taxi & proceeded to the Mayflower Hotel where I attended a conference called by Mgr. C. G. R. At 1.30 a. m. I returned to my hotel via taxi & retired. Taxi $1.05.

At 7 a. m. I again left my hotel & proceeded to the vicinity of #1315 North Carolina N. E. & watched for my subject. At 8.30 a. m. the subject drove up to the house in an auto (Hudson Sedan) #62462 Dist. Col. 1927, he alighted & entered the house. He came out at 9.10 a. m. & walked to Walls Hardware Store, #106 13th St. N. E. he remained there a few minutes & then returned to his home.

At 9.40 a. m. a man called at the subjects house in auto #Q 7 877 Dist. Col. 1927 (This is the auto mentioned in my report of yesterday as D 78) The subject joined a man in the auto & it drove off.

I succeeded in getting a taxi but the chauffeur would do no trailing.

I proceeded to the vicinity of Holmes Bakery at #107 F St. N. W. The auto was there, the subject was in the building.

I Phoned Inv. S 81 & D 9 (N. Y.) & told them to come to the above vicinity as I thought I might be able to designate the subject's brother to them.

The above Invs. met me. I thought that the man driving the Lincoln (Q 7 877) might be the brother. It was not until after 1 P. M. that I learned otherwise.

At 11.40 a. m. the subject & another man (mentioned above) got into a Chevrolet Coupe #S 98 59 Dist. Col. 1927 with some packages & rode away—no taxi available. They returned after a brief absence.

At 4 p. m. the subject again left in the Chevrolet stayed away a brief spell & returned.

During the remainder of the afternoon up to 8 P. M. I saw the subject at different intervals about the Bakery. At 8.30 P. M. a man got into the Chevrolet, I thought he was subject. I succeeded in getting a taxi after a
281 minute or two passed & proceeded with Invs. S 81 & D 9 to 13th St. & N. C. Ave. N. W.

At 9.10 P. M. the subject, an old man & two other men got out of auto #G 2462 & entered the house.

These people were probably the subject's father & brothers. None of us were close enough to get a good flash at them.

At 10:15 P. M. some people got into the last Auto named & drove away. The subject was not with them.

As I did not see the subject leave the house up to 11 P. M. I proceeded to the Mayflower Hotel & there talked with Inv. O 14.

It was 1 a.m. when I retired to my room.

During the day I had occasion to use the phone 10 times calling Mgr. C. G. R. his assistant & Inv. O 14.

Phones .	.50	H - 20
20 hours subsistence	8.00	
1st Taxi .	1.05	
2nd " #H 305.	.65	
Carfares	.32	
	$10.52	

(In pencil:) (1½.)

"Government's Exhibit No. 252."

"N. Y. Opp O 3 reports:

Sat., Oct. 22, 1927.

Continuing on case, I joined B4 at 6:30 and took taxi to subject's home at 1408 Franklin St. and held same until subject came out at 7:45. He drove a Ford Delivery car, license number B 47-31, with the name of W. S. Kenworthy 1617 14th St. N. W. written on each side. He drove down Rhode Island Ave. and up 14th St. until he reached above address. He parked car on side street and went into tire & Gas station, where he is employed. He arrived here at 8:15. I then called Mgr. C. G. R. and he instructed me to hold taxi in case subject came out at any time. "B4" left at 8:30 and I continued surveillance of vicinity with cab. Up to 1:30 subject did not come out of shop and I passed by and saw him at intervals at work. Knowing that subject would work until 6 P. M. as he did not come out at 12 or 1 p. m. I discharged cab, and continued surveillance going from one corner to another. At 5:30 P. M. I hired cab & stood by until 6:15 when subject came out and got into same car he used in the morning. And drove directly home. Arriving there at 6:35, I parked cab on Franklin St. and walked up passed subject's house, and saw him sitting at the table eating, with a woman, presumably his wife, and two youngsters. I could not get description of

woman as I was too far away. I continued surveillance with cab until 11 p. m. and not seeing subject come out I left vicinity. I proceeded to hotel.

282 At 7:30 I noticed car a Dodge sedan, license J-4376 parked on Rhode Island Ave. directly opposite, subject's home. The car was not occupied. At 8:30 three women came out of house next to subject's, walked through the patch of woods and got into car.

Sat., Oct. 22, 1927. Time —.

"03 report.

Expenses:

Hotel	5.00
Meals	3.00
1st Taxi, $1.50 pr. hr. waiting time	7.50
2nd Taxi, waiting time & running time	8.55
Car fare & tele	.20
	$24.25

(In pencil:) (1½.)"

"GOVERNMENT'S EXHIBIT No. 253."

"#014.

"N. Y. 5023. Saturday, 10/22/27.

Continuing at 12:01 a. m. I resumed my work as contact man in the capacity of Asst' to Mgr. C. G. R. and discontinued temporarily at 3 A. M.

I resumed my duties at 7 a. m. and continued until 12 midnight at which time I disco. for the day.

Meals	3.55
Phones	.85
Taxis	1.10
"	.65
"	1.35
"	2.60
Gratuities	.40
Hotel	5.00
Gratuity	1.00
	$16.60

Time 1½."

"GOVERNMENT'S EXHIBIT No. 254."

"Philadelphia Investigator S 70 Reports:

"Burr.

"Washington, D. C., Saturday, Oct. 22, 1927.

Continuing on the above operation at 12 M. I proceeded to New York Investigator O-14 Hotel by cab and was given information he had gotten relative to subject. I later proceeded to vicinity of subjects home in an effort to get a look at subject, being unable to see him I returned to the vicinity of 14th & K Street where subject is employed as real estate salesman. Subject being out of the office I entered and engaged an office girl in conversation, in hopes of getting a connection with subject, however, I was unable to get her to talk about their sales staff.

283 I later returned to vicinity of subjects home but was unable to learn anything of importance, I called subjects home and being informed that he was not at home, I engaged his wife in conversation telling her my name and the Hotel where I'm registered. She promised to have subject call me, asking if I was the party that had made inquiries concerning subject on yesterday, I answered in the negative and concluded our conversation.

I waited at my hotel until 8:30 P. M. but received no call from subject, I proceeded by cab to the vicinity of his home seeing a Chevrolet Coach reported to be his I called on the telephone and engaged subject in conversation.

I talked with him for about five (5) minutes carrying out my pretext, but was unable to make an appointment with him, I found him very reluctant to discuss business in any way, and rather than burn him up I concluded our conversation in such a way as to leave an opening for a later call. After leaving this vicinity I returned to my hotel and sat around the lobby, where I engaged a young man in conversation, this man proved to be a former real estate salesman at present sells stock, we discussed the different real estate companies here and at last mentioned the name of Cafritz. I told this party I would like to get a connection with the above firm and he told me he knew Mr. Cafritz personally seeing this as a possible connection

with subject I cultivated this man whose name is Simmons and made an engagement to meet him tomorrow (Sunday) at my hotel at 2 or 2.30 P. M.

We later had midnight lunch together and after leaving this man I reported to Mgr. C. G. R. and discontinued at 1.15 A. M.

Taxi hire from Mgr. C. G. R. to O. R. and other points	$4.50
Meals .	2.25
Telephones and incidentals	.60
	$7.35

"GOVERNMENT'S EXHIBIT No. 255."

"Philadelphia Investigator S 70 Reports:

"Wash., D. C., Saturday, October 22, 1927.

Continuing on the above operation, upon receipt of a telephone call from Mgr. C. G. R. at 12.30 A.M. I proceeded by cab to the Hotel Mayflower for additional instructions, returning to my Hotel by cab at 2.30 A.M. discontinuing temporarily at this time.

I left my hotel again at 6 A.M. and proceeded to vicinity of Hotel Continental where I was met by New York Investigator K 27, we proceeded to vicinity of 80 L Street, N. E. for the purpose of giving K 27 a spot on subject (5).

After waiting from 6.55 A. M. until 9.30 A. M. with-
284 out seeing subject enter factory, I called used a suitable pretext and established the fact that subject was at work. I gave K 27 an detailed description of subject and reported to Mgr. C. G. R. at his Hotel. Discontinuing on this operation temporarily at 11 A. M.

Expenses:

Hotel	$5.00
Breakfast	.75
Taxi to and from Mgr. Hotel	1.50
Carfare	.24
Telephones & incidentals	.60
Taxi to Wardman Park from operation	1.70
	$9.39

(1½)."

"GOVERNMENT'S EXHIBIT No. 256."

"*Special Report.*

"#9.

"Phila. Invstgr. S-71 Reports:

Washington, D. C., Saturday, Oct. 22, 1927.

"Continuing the above operation at 6.30 A.M. I proceeded to the vicinity of 1916 H St. N.W. where I remained on watch for subject.

At 7.15 A.M. I obtained a cab and held same so I could follow subject should he use his car.

At 8.30 A.M. subject left in his Ford roadster and drove out H St. to Penn. Ave. the cab I had could not keep up with the subject as he is a very fast driver I lost subject around 14th Street.

I then proceeded back to subject's home and at 9.30 A.M. subject returned home with some clothes as if he came from a tailor shop. At 10.20 A.M. subject left again and drove out H St. to Penna. Ave., out Penn. Ave. where my cab got stopped by traffic at 14th St.

I then returned to subjects home. Subject returned home at about 11.15 A.M. and came outside after eating his dinner and then worked about his car.

At 7:45 P. M. subject left his home walked to Pool Room, 1740 Penna. Remained a few minutes then walked across the St. to Johnsons Restaurant 1713 Penna. Ave. remained about 10 min. Subject then walked to the Arlington Hotel where he entered. I entered behind subject but subject had disappeared when I got in hotel. There were several banquets being held at the Hotel. Subject might have gone to one of the Banquets at about 11.45 Subject left hotel with men and young women got into a cab and drove subject to
his home where subject got out and entered his home.
285 I remained in the vicinity until the house was put
in darkness at 1.00 A. M. I then proceeded to hotel and discontinued at 1.45 A. M.

Expenses:

Car fare	.32
Hotel	5.00
Meals	3.00
Taxi A. M. & P. M.	7.50
Telephone	.20
	$16.02"

(1½.)

"Government's Exhibit No. 257."

"W. S. B.

"New York Operating —.

"New York Investigator S-81 Reports:

Washington, D. C., Oct. 22, 1927.

Continuing upon above operation, pursuant to instructions received of Mgr. C. G. R. and New York Operative O-14, I held myself in obeyance at my hotel at 7.00 A. M.

At 10.15 A. M. I received instructions to proceed to the vicinity of the Holmes Baking Co. at #107 F Street, N. W., which I did, meeting in the vicinity New York Operatives M-20 and D-9. I was to be given designation upon subject, #1's brother.

I was soon given designation on a man, assumed to be this brother by Operative L-20. This man was driving a Lincoln Touring car Q-7 877. It was not until after 1.00 P. M. that we found out that this man was not subject #1's brother.

I remained in the vicinity of the Bakery until 8.30 P. M. at which time a man Operative B-20 thought to be his subject came from the bakery and entered a Chevrolet and drove off.

I proceeded with H-20 and D-9, to 13th Street and North Carolina Avenue where we took up surveillance upon the subject's house at 9.10 P. M. the subject of B-20 and two other men, and an elderly man got out of car license #Q 2462 and went into the house. Operatives were not close enough to be able to get a good look at the occupants of the car.

At 11.00 P. M. I proceeded to the Mayflower Hotel and received further instructions upon the operation. I discontinued at 1.45 P. M. During the day I used phone once.

Expenses:

Car Fare	.32
Subsistence	7.00
Phone Call	.05
Incidentals	.50
Total Expenses	$7.87"

(1.)

286 "GOVERNMENT'S EXHIBIT No. 258."

"*Special Report.*

"Phila. Investigator X-12 Reports:

Washington, D. C., Saturday, October 22, 1927.

"N. Y. Operating #5023.

Continuing on above operation at 12.01 A. M. I continued to perform duties assigned me by Mgr. C. G. R., temporarily discontinued at 2.45 A. M.

Resumed duties assigned me at 9.00 A. M. carrying out all orders and getting out reports.

Discontinued 12.00 midnight.

Expenses:

Hotel	6.00
Meals	3.50
	9.50
Taxi	1.80
	$11.30"

(1½.)

Thereupon the witness was handed papers marked Government's Exhibits for Identification 259 to 272, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 23,

1927, and which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.
The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 259."

"N. Y. 5023.
Mgr. C. G. R.

October 23, 1927. Sunday.

Continuing on above I was engaged from 8 a. m. till 12 m. n. directing the operation.
Time 1-½.

Hotel	6.00
Meals	4.30
Taxis, &c.	5.80
	$16.10"

287 "GOVERNMENT'S EXHIBIT No. 260."

"Phil. # —.
N. Y. Inv. B 4.

Washington, D. C., October 23, 1927.

F. J. O. telephoned me this morning and told me to wait in my room until he should get in touch with me again.

I waited until about two o'clock, at which time F. J. O. came to my hotel. He gave instructions N. Y. Inv. 881, and told me to remain where I was so that I could be reached.

I remained in my hotel and went to bed at eleven o'clock P. M.

Expense, Subsistence, $8.00 (1 day)."

"GOVERNMENT'S EXHIBIT No. 261."

"#1.
"N. Y. Opt. —.

"N. Y. Inv. D9 Reports:

Washington, D. C., October 23, 1927.—Sunday.

Continuing on the above mentioned case I left the vicinity #1315 North Carolina Ave. N. E. & watched for Subject # also to get a designation on Subjects brother. I was there by N. Y. Inv. M-20.

About 1.10 P. M. Auto #G-2-462 D. C. Hudson Sedan drove up in front of the door. A few minutes later I saw the Subject on his porch.

At 2.50 P. M. the Subject came out of his house and sat in the above mentioned car for a few minutes and then re-entered his home.

About 3.20 P. M. the Subject again came out of his home accompanied by a small girl about 9 years old. They walked to the "Home" Moving Picture Theatre on C St. near 13th where they entered. I also entered the Theatre.

About 5.15 P. M. the Subject and the little girl left the theatre and joined a lady, who was sitting in the Hudson car outside of the Theatre. The lady apparently is the subject's wife. The subject did not connect with anyone while in the Theatre.

They drove away and N. Y. Inv. M-20 & myself followed in taxi # H 13-80. After leaving the Theatre we lost sight of the car but located it again in a few minutes in front of subject's home. They entered the house and returned in a few minutes to the car and drove away. Before he had gone far we lost him again. We endeavored to locate him but could not do so. We then returned to the vicinity of #1315 North Carolina Ave. N. E.

288 I then proceeded to the vicinity of #1125 D St. N. E. and took up surveillance. Up until 8:00 P. M. I did not see Subject or anyone who might be Subjects brother enter or leave this address. I then returned to the vicinity of #1315 N. Carolina Ave. N. E. where I again joined N. Y. Inv. *Inv.* M. 20 (N. Y. Op. D9 Reports, Sunday, Oct. 23, 1927).

At 8.20 P. M. a policeman ascended the steps of Subjects home and rang the door bell, but did not get any response.

Inv. M20 & myself immediately left the vicinity. The policeman then proceeded to Lamb Drug Store at East Capitol St. & 11th St.

When we returned to the vicinity of Subject's home the lights on the upper floor were lighted.

About 9:15 P. M. we observed a man getting ready to retire. The woman mentioned in the report then drew down the shades.

At 10:00 P. M. the house was in darkness.

At 10:45 P. M. not seeing the subject again I left the vicinity returned to my hotel and discontinued for the day at 11.45 P. M.

Expenses:

Room & meals	7.00
Carfare	.24
Phone	.15
Incidental expense incurred during surveillance	.45
	$7.84

Op. D-9 1½."

"GOVERNMENT'S EXHIBIT No. 262."

"Washington Operating, Case No. —.

9/23/27.

"In continuation of this Operation I arose at 6:30 and upon finishing breakfast boarded street car and went to the vicinity of Subject Holts home 1104 4½ St. S. W. arriving there at 8.00 I took up surveillance from under cover in room at 1013 4½ St. S. W., which I stated I engaged for this purpose in my previous report at 9 a. m. Subject came out on sidewalk in front of his home and was in and out of the house until 12.30 p. m. when he entered and I did not see no more of him until 7.30 p. m. he was then standing in the doorway and as I passed his house he lit a match and lit his cigar at 10 p. m. the lights were out in his home. I remained until 11 p. m. and not having saw subject any more up to this time I discontinued.

Balto. Opr. K-1

Expenses:

Room and subsistence	$7.00
Carfare & Incidentals	.55
	$7.55

(1½)"

289 "GOVERNMENT'S EXHIBIT No. 263."

Special Report.

"N. Y. Optg.

N. Y. Investigator K27 reports:

Washington, D. C., Sunday, Oct. 23-27.

Continuing on above captioned matter pursuant to instructions received from Mgr. Ruddy, left my hotel at 7.30 a. m. & proceeded via Taxicab #H806 to vicinity of subjects home at 1637 U St. S. E. & kept cab waiting.

At 8.53 a. m. subject came out alone wearing a blue suit & went to Church at V St. & 13th St. S. E. at 9.00 A. M.

I then dismissed cab & at 10.05 a. m. subject came out & returned to his home.

At 10.30 a. m. I engaged another cab #M1386 & kept same in vicinity as it was impossible to remain near subjects home, as most of the neighbors were on the porches.

When subject did not come out up to 12.30 p. m. I dismissed the cab, as quite a new neighbors had noticed me & the cab, & in order to divert suspicions I dismissed the cab.

I then remained in & around vicinity during the afternoon & when I was at the corner of 16th & W St. I noticed a Ford Roadster bearing D. C. License #03318 stop in front of subjects home & noticed a young man and woman enter. They had entered before I could get near to get description.

Subject had not left the house up to about 6.30 P. M. at about which time it got dark, & during the evening the dining room & parlor of subjects home were well lighted & on occasional visits past the subjects house I could see subject in the parlor.

As I did not see subject leave the house up to 11.30 P. M. I left vicinity & returned to Hotel & discontinued at 12.00 P. M.

K 27.

Expenses:

Carfares	.16
Phones	.20
Taxi Hire	6.50
Meals	3.00
Hotel	5.00
	$14.86

1½."

"GOVERNMENT'S EXHIBIT No. 264."

"(Penna. Hotel Letterhead.)
Phila. Investigator K 37 Reports:

Oct. 23 '27.

Continuing on the above operation at 6:30 A. M. I left my hotel and proceeded to the vicinity of the subjects residence and observed the subjects car parked in front of his home.

2580 At 2.10 P. M. the subject made his appearance leaving his home accompanied with two women and one man all entered the subjects car, and drove off. I then engaged a taxi and proceeded to follow. They drove several miles on N. Capitol St. and circled back to the vicinity of the subjects residence then to N. E. North Carolina Ave. at the corner of N. C. Ave. and Capitol St. my taxi was delayed due to a traffic jam, and upon following in the direction which the subject drove, and after an extensive search I was unable to locate the car.

I then proceeded back to the vicinity of the subjects residence and kept same under close observation, at 10.45 P. M. the subject and party arrived, and entered his home.

Up to 11:30 P. M. I did not again observe the subject. At This time I proceeded to my hotel and discontinued in the above operation at 12.30 A. M.

Expenses:

Meals	3.00
Room	4.00
Taxi	3.50
Carfare	.32
	$10.82

1½ days."

"GOVERNMENT'S EXHIBIT No. 265"

"*Special Report*

"Phila. Investigator Reports L-36.

Washington, D. C., Sunday, October 23, 1927.

Continuing on the above case I proceeded to vicinity of Subjects home at 7:30 A. M. and took up watch. I did not see any signs of subject until at 10:30 A. M. when subject came out and was tinkering around his car which was in front of his home. He did not come out again until at 2 P. M. when his family and himself entered machine and drove to upper Marlborough, Annapolis and then to Chesapeake Beach where they had supper at 5:30 P. M.

Subject then drove back to Annapolis on same road a distance of 18 miles and from Annapolis over the Defense Highway to the fork of road south of Hyattsville in a traffic jam. I was cut out and tied up for about 10 minutes as this is intersection of Defense Road and Baltimore Road.

I proceeded on into Washington and directly to subjects home arriving there at 8.40 P. M. and subjects car was outside.

The lights were extinguished downstairs at 9.05 P. M. and put on upstairs remaining lit until 9.30 and house was in darkness. Did not see any more of subject.

I returned to hotel at 11 P. M. and discontinued for the day.

291 L-36.

Expenses:

Room	5.00
Meals	3.00
Telephone	.20
Automobile Trailing, 145 miles	20.00
	$28.20

1½."

"GOVERNMENT'S EXHIBIT No. 266."

"=1, W. S. B.
N. Y. Opt.
N. Y. Inv. M20 Reports:

Washington, D. C., Sunday, October 23, 1927.

Continuing on the above entitled case I left my room at 8.30 a. m. & proceeded to the vicinity of =1315 North Carolina Ave. N. E. & watched for my subject.

N. Y. Inv. D 9 was there.

Shortly after 1 P. M. Auto =G2462 Dist. Col. 1927 (Hudson) drove up in front of the door.

A few minutes later I saw the subject on his porch, whether he came in the car or not I cannot say.

At 2.50 p. m. the subject came out of the house, he sat in the car for a minute & then re-entered the house.

The subject left the house again at 3.30 P. M. accompanied by a small girl. They walked to the Home Moving Picture Theatre on C St. near 13th.

At about 4.20 P. M. the Hudson car, with a lady (wife) driving it arrived near the theatre.

It was 5.15 p. m. when the subject & little girl left the theatre & joined the lady in the car.

They started away. Inv. D 9 & I followed in taxi H1380 which we had engaged at 4.40 p. m. After leaving the theatre we lost sight of the car but picked it up in front of the subject's home. The subject entered the house remained there—in a minute & then returned to the car. Again it drove off & before it had gone far we lost it. We endeavored to pick up the trail but could not, so we returned North Carolina Ave. N. E. & held the house under surveillance.

At 8.20 p. m. a policeman ascended the steps of the Subject's house & rang the bell. He got no response. Inv. D9 & I saw this and we immediately departed. The cop entered Lambs Drug Store on E. Capitol Ave. & 11th St. & smoked a cigarette. I believe his shield number is 785.

292 When I returned to the North Carolina Ave. address the lights in the upper floor were lit.

At 9.15 P. M. I could see a man getting ready to retire. The children were there. The woman mentioned in this report then drew down the shades.

At 10 P. M. the house was in darkness.

As I did not see the subject again up to 10.45 P. M. I returned to my hotel wrote this report & discontinued at 11.45 P. M.

I'm positive that there was no one else endeavoring to shadow this subject today, nor was there anyone else on him yesterday.

I would like to have a machine on this subject.

I was in touch with N. Y. Inv. 0-14 today.

M 20.

Subsistence	8.00
Taxi fare tip & waiting time	2.50
Carfares	.24
Phones	.20
	$10.94"

15 hours 1-½ day.

"GOVERNMENT'S EXHIBIT No. 267."

"N. Y. Opp. 03 Reports.

Sun., Oct. 23, 1927.

Continuing on above case I took cab from hotel at 6:30 and arrived in vicinity of subject's home at 7.00 where I kept surveillance of same. At 10.00 subject came out driving the same car he had yesterday license number B47-31. I started after subject when he was about a block away, but subject turned back and saw cab coming and stopped. I continued past him and turned corner. He *downed* down 13th St. to Laurence and turned on Laurence. I continued

after him, but when I got to Lawrence St. subject was waiting there again. And I had to continue on 13th St. knowing that subject knew that he was being followed by cab, I dropped him. And reported to Mr. O. R. who in turn told me to continue on it and do the best I could. I returned to vicinity at 2.30 p. m. and subject's car was in his garage, knowing that subject was home I parked on Rhode Island Ave. And walked as near the house as I could without arousing suspicion up to 11.00 p. m. I did not see subject come out, so I left vicinity and returned to Hotel.

Expenses:

Room	5.00
Meals	3.00
1st cab	5.90
2nd cab	12.75
Carfare &c	.25
	$26.80

1-½ day."

293 "GOVERNMENT'S EXHIBIT No. 268."

C. G. R.
#014.
N. Y. 5023.

10 23 27, Sunday.

Continuing on the operation at 12.01 a. m. I resumed my duties as contact man and continued my work until 2.15 a. m. at which time I disc. temporarily.

I resumed my duties at 8.50 a. m. and continued the work assigned until 12 midnight at which time I disc. for the day.

Meals	3.85
Taxi	.90
"	2.35
"	.60
"	1.45
"	.80
Phones	1.55
Hotel	5.00
Tips	.45
	$16.95"

Time —.

"GOVERNMENT'S EXHIBIT No. 270."

("On Letterhead Raleigh Hotel.)
"Philadelphia Investigator S 70 Reports:

Wash., D. C., Sunday, Oct. 23, 1927.

Continuing on the above operation, I left my Hotel at 9 a. m. and proceeded by cab to Mgr. C. G. R. Hotel for the purpose of reporting and receiving additional instructions. I then returned to my Hotel and awaited the arrival of one Mr. Simmons whom I mentioned in my reports of yesterday. Meeting Simmons at 2.30 P. M. we sat around the Hotel lobby for some time and then proceeded to Loew's Palace Theatre. After the Theatre we had dinner at The Occidental Hotel. After dinner we went for a walk and later Simmons suggested refreshments. We proceeded by cab to the Kenesaw Apartments 16th & Irving there is a private apartment refreshments can be had, we remained there a short time then returned to my Hotel.

During this time I learned from Simmons, his first name was Gordon and he lives in Seat Pleasant, Maryland with his mother in law, he has been employed since 1919 selling real estate and stocks & bonds, also Marmon Automobiles. He at one time was employed by Cafritz Company, and is acquainted with a couple of their salesmen, however, he did not mention subject Burr's name, neither did I.

At 1.30 A. M. after a midnight lunch I left Simmons, he told me he would be busy tomorrow morning and was going to the races at Laurel in the afternoon, but would see me after the races or call me, this man is anxious that I
294 locate here and with the pretext I am using on him, feel satisfied he will make possible a meeting with Burr very shortly.

After subject left I discontinued at 2.30 A. M.

Expenses:

Hotel	$5.00
Breakfast	.75
Lunch	1.00
Theatre with Subject	2.00
Dinner with subject	3.00
Taxi Hire	4.00
Telephone	.20
	$15.95"

(1½ day.)

"GOVERNMENT'S EXHIBIT No. 270."

"*Special Report*

"Phila. Instgr. S 71 Reports:

Washington, D. C., Sunday, Oct. 23rd, 1927.

Continuing the above operation at 7.00 a. m. I proceeded to the vicinity of subjects home 1916 H. St. N. W. where I secured a Taxi and remained on watch for subject at 9.30 a. m. Subject left his home with presumably his brother in Ford Rdstr. and drove to St. Stevens Church, 25th & I. Sts. remained about one hour then left and drove to 1740 Penna. Ave. Pool Room there met a man and walked in to Restaurant Reeds 1712 Penna remained about 30 min. and left with the man he entered Restaurant with in an Essex Coach license number District of Columbia N. 5757 and drove through Potomac Park—out the speedway then back to East Potomac Park where subject and his friend left the car and watched a foot ball game for an hour.

Subject and his friend left the football game and drove subject to his home the man in the Essex driving away.

The subject remained in his home about 10 min. then left his house and boarded a Rosslyn car I followed in cab to the Bridge where subject got off and took a bus to Clarendon, Va. getting out of bus at Spruce St. and walked to #26 entering house about 30 min. later subject left with a young girl walked to the main road where a man and lady picked subject and his girl friend up in Hudson Coach District

Columbia License #J-140 and then they drove in to Washington, D. C., around the city then stopped at the 1717 17th St., the Traymore Apt. where the subject and his party of 3 entered remained about 30 min., then drove down around the capitol and around that part of the City where they then drove to the Cambridge Apt., 921 19th St. where the subject and his party of 3 left the car and entered the Apf. Subject and the man left the Apartment and drove to subjects home remained only about 5 min. then drove back to the apartment remained about 5 or 10 min. then left
295 apt. house with his Gentleman friend drove to his home 1916 H St. Subject ran into house while his friend remained in car, subject then came out got into car and they drove back to 921 19th st. The Cambridge Apt. remained about 3 hours then party of four left and drove to 26 Spruce St. Clarendon, Va. where subject and his lady friend entered while man and lady with Hudson Coach drove away.

I then remained in the vicinity on watch for subject until 11.30 P. M.

When he left and walked to Bus Line and then proceeded home arriving at about 12.30 A. M.

I remained in vicinity until house was put in darkness at about 1.00 P. M. I then proceeded home and discontinued at 1.45 A. M.

Expenses:

Car Fare	16
Hotel	5 00
Meals	3 00
Taxi	28 15
	$36 31

1½.

(*Attached Receipt.*)

Diamond Cab Co.

Executive Offices 1324 14th Street N. W.,

Washington, D. C.

Oct. 23rd, 1927.

Received of cash $28.15 for taxi cab from 10 A. M. Oct. 23rd to 12.30 A. M. Oct. 24th.

J. W. JOHNSON.

#258."

"GOVERNMENT'S EXHIBIT No. 271."

"W. S. B.
"New York Operating.
New York Investigator S-81 Reports:

Sunday, Oct. 23.

Continuing on above operation, pursuant to instructions received from Mgr. C. G. R. and New York Operative O-14, I held myself in obeyance at my hotel at 9.00 A. M. I received further instructions from New York Operative O-14, at 10.30 A. M. via telephone.

At 2.30 P. M. I left hotel and went to conduct investigation of a license #N-5259, which is an Essex Coach, listed as being owned by a Mrs. J. E. Vogts at #1411 North Carolina Ave. N. E.

I therefore went to the vicinity of this address, and after finding out that the occupants of this house were not at home, started to make inquiries of the neighbors, in doing so, used strong pretext.

The first place I went to call on, was a house a few doors from #1411 N. C. Avenue.

296 My ring on the bell was answered by an elderly lady with whom I fell into conversation concerning real estate in that particular locality. This lady is an old time resident of the neighborhood and owns two houses around there. She is a typical neighborhood gossip.

From here I found out that this Mrs. Vogts lives with her husband and an 8 year old boy. They do not live at

#1411 N. C. Ave. any longer, but are living at present down the street at #1317 N. C. Ave. which is right next door to where the foreman of the Jury lives (1315) N. C. Ave.

Mrs. Vogts, during the day time is Freight Agent for the Baltimore & Ohio R. R. and the Baltimore & Potomac R. R. At night, however, he is in the employ of the U. S. Government, doing accountant work.

I was told by informant that the Vogts had lived at #1411 N. C. Avenue for 7 or 8 years, but had sold the house out right to the present tenants for $7,750. They moved from here 6 months ago to their present address. Mr. Vogts is thought by neighbors to be fairly well fixed as to money.

During the influenza epidemic in Washington & country a few years back, Vogts, by virtue of his being Freight Agent for these two R. R. made in the neighborhood of $1,000.00 in 4 days by granting favors relative to the shipping of bodies of the flu epidemic.

After finishing off the conversation with this lady, I left vicinity and went to vicinity of Vogts' house at #1317 N. C. Ave where I took up surveillance on house in order to get a good flash at him, in case anything should come up later in the operation concerning him. I remained in this vicinity until 9.40 P. M. but did not see him, or any signs of activity in the house such as lights, moving of shades, etc. I therefore discontinued and returned to hotel after calling and reporting to Operative O-14.

Exp.:

Incidentals	50
Subsistance	7 00
Car fare	40
Phone Calls	10
	$8 00

(1.)"

"GOVERNMENT'S EXHIBIT No. 272."

"Special Report.

"N. Y. Operating #5023.
Philadelphia Investigator X-12 Reports:

Washington, D. C., Sunday, Oct. 23rd, 1927.

Continuing above operation at 9.00 a. m. I resumed my duties assigned by Mgr. C. G. R. Discontinuing at 11.00 P. M.

Expenses:

Hotel	6 00
Meals	3 50
Taxi	1 60
	$11 10

1½."

297 Thereupon the witness continued under questioning by the Court as follows: In Government's Exhibit No. 243, my own report, I state that "During the day was engaged in conference with clients." That would refer to Mr. Day and Mr. Clark if there was more than one present.

Thereupon the witness was handed papers marked Government's Exhibits for Identification 273 to 286, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 24, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.
The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 273."

"N. Y. 5023.
"Mgr. C. G. R.

Oct. 24/27, Monday.

Continuing on above I was engaged from 7.30 A. M. directing the operation. I was necessary to proceed to

Phila. to connect with other phases of the case. I discontinued at 3.30 A. M.

Hotel	6 00
Meals	4 55
R. R. Fare Phila. & ret	12 06
Taxi hire	8 80
L. D. calls	2 70
L. Calls	1 40
	$35 51

(2 days.)"

"GOVERNMENT'S EXHIBIT No. 274."

"C. G. R.
"Phil. #—.
"N. Y. Inv. B-4.

Washington, D. C., October 24, 1927.

Continuing this case today I left my hotel with N. Y. investigator S81, who had come to me with instructions from F. J. O., and went to meet F. J. O. We then went with him to the Tax Collector's Office where I was instructed to investigate Josephine Hopkins, 1362 Otis
298 Place, N. W., and hold operator of the car (License #U202) under surveillance for the rest of the day.

I found that the subject's husband, Fred M., works in the Patent Office as an examiner. Hiring a car, I then searched thoroughly in the vicinity of 13th & D, where the car had been seen parked. Not finding the car I went to 1362 Otis Pl. and halted where I could observe every car going in or out of the alley, having first located the subject's garage at the back of the house.

At six-thirty o'clock P. M. the car came in and was put into the garage. From that time I watched, alternately, the front and rear of the house.

At eight-thirty o'clock, Mr. and Mrs. Hopkins, an elderly couple came out, and walked down the street to 1345 Otis Place, where they entered. They sat in the living room and visited with the occupants of the house.

At ten o'clock, they returned home and entered their own house.

I waited until twelve o'clock, midnight and then, seeing no signs of activity left the vicinity of the house and returned to my hotel where I discontinued for the day.

Expenses:

Carfare	16
Auto hire	3 92
Subsistence	8 00
	$12 08

(1.)"

"GOVERNMENT'S EXHIBIT No. 275."

"N. Y. Opt.
N. Y. Op. D 9 Reports:

"Mr. W. S. B.
Washington, D. C., Monday, Oct. 24- 1927.

Continuing on the above case I conferred with Mgr. C. G. R. at 10.30 A. M. after which I proceeded to the vicinity of the Court House where I was joined by N. Y. Inv. M-20.

At 12.55 P. M. I observed subject standing in front of the Court House talking with 4 men. One of these men, N. Y. Op. M-20 recognized as having been greeted by a woman the other day. "Hello rejected juror. Description of this man follows. Age about 34, height 5' 8" or 9" Blue suit, gray soft hat, and he appears to have a dislocated jaw as he talks draws his mouth to the side. This man and the other 3 men entered the Court House.

The subject came out of the Court House again at 3.01 P. M. with #11 and Inv. M-20 & myself placed him under surveillance. Subject & #11 walked to 3rd St. between D & E, got into a Ford #F-37-39 D. C. 1927 & drove off. A taxi that N. Y. Inv. M-20 had engaged at 2.50 P. M. was not at the place and he had parked it so therefore the subject got away.

299 Inv. M-20 & myself then proceeded to Holmes Bakery on F St. We remained there until 6.00 P. M. but did not see the subject.

The Lincoln car & Chevrolet car mentioned in previous reports were parked near the Bakery.

At 6.00 P. M. we proceeded to the vicinity of 1315 North Carolina Ave. N. W. The subject was in the house and Hudson Sedan # G 2-462 D. C. 1927 was parked in front of the house.

At 7.40 P. M. a man who used a search light to guide himself down the steps came out of the Subject's house and due to the position we were in we could not note his movements due to our position and he disappeared.

On the block right near subject's home is an alley where people park cars. A short while later a man I am sure this is the one who came out of subjects house a few minutes before and drove off in car Q 7387 D. C. 1927.

A minute later another man came out of the alley and walked up the street and got into Auto #P 9563 this is also D. C. License.

At 7.55 P. M. the subject came out of his car and drove away in Hudson Car.

(N. Y. Op. D9 Reports. Wash., D. C., Oct. 24, 1927.)

I think that he put same in a garage as he did not have any hat on as he returned to the house at 8.10 p. m. on foot.

Up until 11 p. m. Inv. M. 20 & myself continued surveillance but did not see the subject again. We then proceeded to Quarters of N. Y. Inv O 14 and after conferring with him returned to my Hotel and discontinued for the day at 1.00 A. M.

Expenses:

Room & Meals	7.00
Carfare	.16
Phone	.15
Incidental cover on surveillance	.50
	$7.81"

(1½.)

"GOVERNMENT'S EXHIBIT No. 276."

"Washington Operating, Case No. 10. 9-24-27.

In continuation of this operation I took up surveillance at 12.30 P at John Marshall & D St. opposite the Court

House and at 12.50 P subject Chas. Holt came out walked down D St. to 5th St. and went to E then returned and hung about the Court House until 1.25 P when he
300 entered the Court House by the rear door at 2.30 P. I again took up surveillance and at 3.10 P. subject came out and accompanied by another juryman walked down D St. to 9th St. where they separated and subject went down 9th St. to Pennsylvania Ave. where boarded a street car and I boarded same car 1 block further away. We rode to 4½ and B Sts. Subject got off. I did same. Subject entered his home at 3.30 P. I went to my room where I could shadow under cover and kept a close surveillance and saw subject at different intervals up to 7 P at 7.45 a closed sedan Dist. Col. License No. F 176 parked on L St. near 4½ St. a man about 35 yrs, 5 ft 9 tall, weight 200 lbs. smooth shaven stout build wore grey suit light felt hat got out and went into subjects home 1104 4½ St. he remained there until 8.20 P. coming out he entered said car and drove south on L St. and was lost to my view I did not see subject any more up to 12 midnight when I discontinued I boarded a street car and went to Hotel and a few minutes after I had gotten in my room I received an anonymous telephone call warning me to get out of the neighborhood of S. W. 4½ Street, as they would see me tomorrow as they know who I am and what I am and where I am. I called Mr. O'Reilly on phone and told him of these proceedings. Mr. O'Reilly told me to call Mr. Robbins which I did, I then discontinued.

Balto. Opr. K-1.

Expenses:

Room at hotel & subsistence	$7.00
Carfare, phone calls, incidentals	.75
	$7.75

(1½).

"GOVERNMENT'S EXHIBIT No. 277."

"*Special Report.*

Washington, D. C., Monday, Oct. 24, 1927.

"N. Y. Optg ≠
"N. Y. Investigator K 27 reports:

Continuing on above captioned matter pursuant to instructions received from Mgr. CGR, left my hotel at 12.00 noon & proceeded to vicinity of court house.

At 12.45 p. m. subject came out & went to the Public Comfort Station at Pa. & 7th St. N. W. at 12.50 P. M. Came out & stood in small park looking all around, & then walked to Park at 9 & B N. W., where he sat on his haunches leaning against a tree & ate some sandwiches which he took out of his coat pocket.

While in park subject kept looking around until 1.10 P. M. at which time he left park & walked to 10th St. through Centre Market to Pa. Ave. to D St. back to Court House grounds, where he spoke to the following described man, whom I think is a fellow juror until about 1.25 p. m. at which time he entered court house. Age 55 years 5' 6" Grey Hair very stout short stature. Wore light grey hat, light grey suit.

301 At 3.00 P. M. subject came out & walked to 5th & G St. N. W. where he stood on corner looking around & at 3.10 P. M. boarded a Brookland Car & rode to No. Capitol & L Sts. N. W. & then walked to ≠ 80 L St. N. E. entering about 3.20 P. M. I remained in vicinity and at 4.15 P. M. engaged cab ≠M 1186 as per instructions & had some waiting until 4.55 P. M. at which time subject came out with 3 other men & entered a Pontiac Car U (You) 1949 & rode to 11th & M Sts. N. W. where subject left the Pontiac & boarded an Anacostia Car & rode to U & Nichols Ave. S. E. & purchased a paper corner of Good Hope Rd. & Nichols Ave. S. E. & then walked to his home entering about 5.35 P. M.

I remained in vicinity, & at about 7.05 P. M. I noticed the Ford Coupe District of Col. License ≠U 3.318 stop at house & a young man got out & entered, but owing to darkness could not get near enough for description. (The above number is a correction of number in report of Sunday, Oct. 23 27.)

I did not see subject leave house up to 10.30 P. M. at which time the house was in total darkness & as subject did not come out up to 12.00 P. M. I left vicinity & returned to hotel & discontinued.

K-27.

Expenses:

Car fares	.48
Phones	.10
Meals	3.00
Hotel	5.00
Taxi	2.00
	$10.58

(11½.)

"Government's Exhibit No. 278."

"On letter-head of Hotel Pennsylvania.

Washington, D. C., Monday, Oct. 24-'27.

"Phila. Investigator K37 Reports:

Continuing on the above operation at 11.00 A. M. I left my hotel and proceeded to the vicinity of the Court House, and kept same under close observation.

At 12.30 P. M. the subject made his appearance leaving the side entrance of the Bldg. and walked to the Capitol Lunch across the street from the court house, leaving here he walked back to the court house grounds and entered conversation with several men who were standing near the side entrance to the bldg.

At 1.20 P. M. the subject entered the Bldg.

At 3.00 p. m. the subject made his appearance leaving the building accompanied with juror #1, and walked to 3rd St. and D St. and both entered the subject's car, and drove east on D St. As there was no taxi available at this time I could not follow.

302 Upon obtaining a taxi I proceeded to the vicinity of subject's home but could not locate his car. I then proceeded to his place of business and found the subject conversing with several of his help. Shortly after my

arrival the subject left in his car and drove around the block returning back to the garage, and upon his arrival I observed a Ford Sedan, Dis. Col. Tag S.5099, park in front of the garage and the driver entered conversation with the subject, this party upon leaving the subject drove to where I was parked and observed me very closely, then drove back to the garage, and conversed with the subject.

I then changed the position of my taxi, shortly after doing this the above stated man again drove by and observed me very closely.

At 5.10 P. M. the subject left the garage in his car, and drove a circular route to his home.

At 7 P. M. the subject left his home accompanied with a middle aged woman of a stout build and drove to 15 St. N. E. and Maryland Ave. and parked the woman then left the car and entered a confectionery on this corner, the subject then turned his car around in the middle of the block and parked in front of the store, after the woman entered the car he again turned his car around and drove through a side street, and continued to stop and made short turns in the middle of the every third or fourth block until reaching the Lowes Palace Theatre, he and the woman entered.

I then remained in this vicinity and kept this Theatre under close observation.

Upon leaving the Theatre the subject with the above stated party drove back to his home.

I then remained in this vicinity until 11.30 P. M. but did not again observe the subject, at this time I proceeded to my hotel and after writing this report discontinued on the above operation at 12.30 A. M.

Expenses:

Meals	3.00
Taxi, 6 hrs. @ $2.50	15.00
Drivers Tip	2.00
Room	4.00
Car fare	.32
	$24.32

(1½.)"

"GOVERNMENT'S EXHIBIT No. 279."

"*Special Report.*

"Phila. Investigator L-36.

Washington, D. C., Monday, October 24th, 1927.

Continuing on above case I took up watch at Court
303 House and subject #4 juror came out at 12.50 P. M. and went to his car and drove to 1013 Eighth St. returning at 1.25 P. M. and parking car at 3rd & D Sts. on 3rd and proceeded to Court House and entered.

Subject came out of Court house at 3.30 and walked to his car and entered and drove south on D St. and west on Penna Ave. and south on 13th to his place of employment 13th & D Sts. where he entered remaining until 5.30 and he then drove to his home at 1013 Eighth St. N. W. and parked his car and entered where he remained the balance of evening. The lights were extinguished at 9.20 P. M. downstairs and light in front room on second floor until 9.35 and then put out.

Returned to hotel at 11.30 P. M. and discontinued for the day.

L-36.

Expenses:

Auto trailing	15.00
Room	5.00
Meals	3.00
Telephone	.40
	$23.40

(1½.)"

"GOVERNMENT'S EXHIBIT No. 280."

W.S.B.

"N. Y. Opt. #—.

N. Y. Inv. M 20 Reports:

Washington, D. C., Monday, Oct. 24, 1927.

Continuing on this assignment I met Inv. O 14 at 11 a. m. & after a brief talk with him I proceeded to the vicinity of

the Court House. N. Y. Inv. D9 & other Invs. assigned to this matter were there.

At 12.55 P. M. I observed the subject standing in front of the court house talking with 4 men. I recognized one of these as having been greeted thusly by a woman the other day—"Hello there rejected juror."

The old gent that sits in the box talked a word with the subject.

After a few minutes elapsed the subject walked up D Street I gave him a long shadow due to the 4 men—at 6th & D he ducked in some place & I lost him. I stood where I had last seen him and at 1.20 P. M. he passed me. I resumed the surveillance. The subject returned to the court.

After having dinner I returned to the court.

The subject came out a minute after three with #11. Inv. D9 & I placed him under surveillance. He & #11 walked to 3rd at between D & E & got into a Ford #F3739 Dist Col. 1927 & drove off. A taxi that I had en-
304 gaged at 2.50 p. m. was not at the place I had parked it so therefore the subject got away.

Inv. D 9 & I proceeded to Holmes Bakery on F St. We remained here till 6 P. M. but did not see the subject.

The Lincoln car & the chevrolet were parked there.

At 6 P. M. we proceeded to the vicinity of #1315 North Carolina Ave. N. W. The subject was in the house. Hudson Car #G-2462 Dist. Col. 1927 was in front of the house.

At 7.40 P. M. a man who used a search light to feel his way down the steps came out of the house. I could not immediately note his movements due to my position, but when I turned to interest myself in him he was out of sight.

On the subjects block next to the church is an alley. In this alley are parked cars.

A short while later a man I am sure is the one mentioned above drove out of the alley, in a small car #Q 7387 Dist. Col. 1927.

A minute later another man came out of the alley, he walked up the street & got into Auto #P 9563 this also is Dist. Col. 1927 (The last number man have no connection in this matter.)

The subject came out of the house at 7.55 P. M. & drove away in the Hudson (G 2462). I imagine he put it up

for the night for at 8.10 P. M. he returned on foot & entered the house.

Up to 12 P. M. Inv. D. 9 or I did not see the subject again. We proceeded to the quarters of Inv. O. 14, and after a conference I returned to the hotel where I retired at 1 A. M. & discontinued for the day. I moved to the Hotel Commodore today.

M-20.

Incidentals (Dining Serv)	.60
Subsistence	7.00
Carfare	.16
Phone	.20
13 hours. ($1\frac{1}{2}$.)"	$7.96

"Government's Exhibit No. 281:"

Mon. Oct. 24, 1927

"N. Y. Opp 03 reports:

"Continuing on above case, I arrived at court house at 12.30 and waited for subject to come out. At 12.30 subject along with other jurors came out. He walked down D st. to 6th turned here and walked to Benedicts Lunch on 6th & Penn. Ave. Subject sat at a table all alone, and came out again at 1.05. He walked unaccompanied, back to the Court House, and went inside of same at 1.15. I
305 kept surveillance of vicinity until 1.40 and knowing court was in session left, until 2.30 P. M. When I returned and continued surveillance. At 3.00 subject came out, and in company of another man, "about 35 yrs. old 160 lbs. dk complected dk brown hair, about 5'10$\frac{1}{2}$", tall & rather slim, wearing a blue suit, light grey felt & black shoes." Walked down D St. to 3rd and entered a Ford Coupe, K 75 21, with the name "American Ice Co." on the side. No taxis being in vicinity, I boarded trolly and proceeded to 1617 14th St. N. W., where subject is employed. On arriving there I found that subject in the shop. I kept surveillance of vicinity without cab until 5.30 and knowing subject left for home around that time I hired cab and continued surveillance, as best I could, on account of the disadvantages there is in the vicinity. Subjects

home is in the suburbs and the houses are few and far between. I left vicinity at 11.45 and proceeded to hotel. Not seeing subject come out up to that time.

Expenses:

Room	5.00
Meals	3.00
Car fare & Tele	.40
Taxi & Tip	11.25
	$19.65

Time 1½."

"GOVERNMENT'S EXHIBIT No. 282."

"C. G. R.
"#014
"N. Y. 5023.

Monday, 10/24/27.

Continuing on the above operation at 12.01 a. m. as assistant to Mgr. C. G. R. I worked until 2 a. m. at which time I temporarily discontinued.

I resumed my work at 8.10 a. m. and worked on the duties assigned me and discontinued at 12 midnight.

Hotel	5.00
Taxi	1.15
"	2.45
"	1.00
"	7.45
"	.90
Meals	3.70
Western Union	1.44
" "	1.61
Phones	1.35
Gratuities	.65
	$26.70

Time 1½.)"

306 "(On the letter-head of The Raleigh, Washington, D. C.) Philadelphia Investigator 870 Reports:

R. J.

Washington, D. C., Monday, Oct. 24, 1927.

"Continuing on the above operation at 10 A M. I proceeded to the vicinity of subjects place of business 14th & K Streets, for the purpose of getting a look at him; I waited around until 12 noon at this time not having seen subject's car I entered his office and made inquiries concerning him and learned he was not in and was not expected in until late in the afternoon. I called back later but found subject had not returned. At 4.30 P. M. I met Simmons mentioned in previous reports through whom I hope to meet subject, he told me he had been to Cafritz office, but was unable to see him, as he was at the races and was not expected back today.

Simmons and I had dinner together and later went to the theatre, he called a friend of his on the phone and received an invitation to go to their home, we accordingly proceeded by cab to this place (Claridge Apartments 1604 O Street, where we were served refreshments as this man Simmons is my only hope of getting acquainted with subject it is necessary for me to play with him as I will have to do later on with subject. We remained at his apartment until 3 A. M., during this time I was building up my pretext and no doubt will be better situated to meet subject. I returned to my hotel after leaving Simmons and discontinued.

Expenses:

Hotel	5 00
Breakfast	75
Lunch	1 00
Dinner with Simmons	2 50
Theatre	1 50
Telephone	45
	$10 95
Valet	1 00
Laundry	2 40
	$14 60"

(1½.)

"GOVERNMENT'S EXHIBIT No. 284."

"Special Report

"Phila. Invstgr. S-71 Reports:

Washington, D. C., Monday, Oct. 24th, 1927.

"Continuing the above operation at 11.30 A. M. I proceeded to the vicinity of the court house where I remained on watch for subject. The subject left the court at 12.50 P. M. walked to the corner of 4th St. He talked with three or four cable men who were doing some work for the Potomac Power & Light Co. on the corner then subject went
306} into the Court House Coffee Shop where he had his lunch remained until about 1.15 P. M. then walked to the side steps where he held conversation with the two women jurors then entered the building at 1.20 P. M.

At 3.05 P. M. subject left the court walked to the corner of 9th with another juror and then walked to the United Cigar Store corner 11th & Penna. Ave. remained about 5 min. then boarded trolley he being the only one waiting for car I followed in a taxi subject got off the car corner 18th St. & Pa. Ave., walked back to 1712 Pa. Ave. which must be a club of some kind and remained until 5.00 P. M.

The subject then went home for supper.

At 7.30 P. M. subject left his home and walked to 1700 block where he got into Ford Roadster in front of 1712 Pa. Ave. and drove to Cambridge Apt. 921 19th St. remained about 25 min. then drove back to 1712 Pa. Ave. where subject entered and walked up the stairs there were only a light burning on the 3rd floor. Subject remained here until 12.15 A. M. then walked to his home 1916 H St. I remained in the vicinity until 1.00 A. M. I then proceeded home and discontinued at 2.00 A. M.

Expenses:

Car Fare	32
Taxi	6 35
Hotel	5 00
Meals	3 00
Telephone	25
	$14 92"

(1½.)

GOVERNMENT'S EXHIBIT No. 285."

"W. S. B. Rewritten.
"New York Operating #—.
New York Investigator S-81 Reports:

Monday, Oct. 24-27.

Continuing upon above operation pursuant to the instructions received of Mgr. C. G. R. I left hotel and started operation at 10.00 A. M.

The license number P-1738 is an Oakland Roadster listed under the name of H. R. Lamb of 1135 16th St. N. W. Lamb is also a spec. asst. to the Dist. Atty. of the Dep. of Justice and is also employed in the Dept. of Justice at #1001 Vermont Avenue.

I proceeded to this address but did not see the car parked in the vicinity. I remained here until 6.30 P. M. then left, and proceeded to the Racquet Club at #1135 16th St. N. W. where I took up surveillance upon house and remained here until 11.30 P. M. but did not see subject's car around. I then returned to house and discontinued after reporting to N. Y. Operative 0-14—

Expenses:

397	Carfare	32
	Phone calls	15
Subsistence		7 00
Incidentals		50
	Total	$7 97"

(1½.)

"GOVERNMENT'S EXHIBIT No. 286."

"*Special Report.*

Washington, D. C., Monday, Oct. 24th, 1927.

"N. Y. Operating #5023.
Philadelphia Investigator X-12.

Continuing on the above operation at 9.00 A. M., I resumed my duties and discontinued at 12.00 midnight.

Expenses:

Hotel	6 00
Meals	3 80
Taxi	2 30
	$12 10"

(1½.)

Thereupon the witness continued under questioning by the Court as follows:

Government's Exhibit 251 was made by M-20, Merritt, and is dated October 22. In the first paragraph he says that he received a phone call at his room to attend a conference at the Mayflower Hotel. There were present at that conference only myself and the operatives employed in this case. It was held in O'Reilly's room at the Mayflower.

Thereupon the witness continued under questioning by Mr. Gordon as follows:

At various times during the conference all the operatives were there. It began a little before midnight, when the men discontinued. Phone calls were made to their hotels. And if they were not in word was left for them to call in at the Mayflower when they got in. Merritt got there later than most of them, if I remember rightly.

Thereupon the witness was handed papers marked Government's Exhibits for Identification 287 to 297, inclusive, which he identified as being the original handwritten
308 reports of the witness and the operatives for October 25, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.

The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 287."

"*Special Report.*

Washington, D. C., Tuesday, Oct. 25th, 1927.

"N. Y. Operating #5023.
Manager C. G. R.

Continuing on the above I was engaged from 7.30 A. M. to 12.00 midnight directing operation.

Expenses:

Hotel	6.00
Meals	4.50
L. D. Call	.90
Local Phone	1.00
Taxi	.35
	$22.60

(1½.)"

"GOVERNMENT'S EXHIBIT No. 288."

"(Rubber Stamp:) New York Office, Oct. 26, 1927. F. M. K.

New York City, October 25, 1927.

Phil. #5023.
N. Y. Inv. B 4.

Having been instructed to remain in my hotel, I stayed there this morning until Eleven-thirty, at which time F. J. O. called and got my report for the preceding day. He instructed me not to leave the hotel, but to wait there for further instructions.

At about one forty-five P. M. he returned with Manager C. G. R., who instructed me to return to New York.

I left Washington, went to New York and returned home, where I arrived and discontinued at Eight-thirty o'clock, P. M.

Time —.

Expense:

309	Carfare	.05
	Taxi	.35
Railroad		10.02
Breakfast		1.00
Luncheon		1.00
Dinner on train		1.50
Tip to Pullman Porter		.50
One day.		
		$14.42

(Time stamp, "11.30 Oct. 27, 1927," on reverse side.)

"GOVERNMENT'S EXHIBIT No. 289."

"(Rubber Stamp:) New York Office, Oct. 26, 1927. F. M. K.

Mr. W. S. B.

Washington D. C., Oct. 25, 1927.

"N. Y. Opt. 5023.

N. Y. Op. D 9 Reports:

Continuing on the above case I held myself available at my hotel from 8.00 A. M. as per instructions of Mgr. C. G. R.

At 1.30 P. M. I received instructions from Mgr. C. G. R. to return to New York. I then checked out of my hotel and boarded the 3.00 P. M. train en route to N. Y. and discontinued for the day at 8.15 P. M.

Railroad fare Wash. D. C. to N. Y.	$10.02
Meals	3.00
	$13.02

One day.

(Time stamp, "10.30 Oct. 29 '27," on reverse side.)"

"GOVERNMENT'S EXHIBIT No. 290."

"(Stamped with a rubber stamp:) "New York Office, Oct. 26, 1927.
F. M. K.

Washington, D. C., Tuesday.

"*Special Report.*

"N. Y. Optg #5023.

N. Y. Investigator K 27 reports:

Continuing on above captioned matter pursuant to instructions received from Mgr. C. G. R. remained at my hotel until about 1.00 p. m. when I received instructions to return to N. Y. City.

Left Washington D. C. at 3.00 p. m. arriving at 8.20 p. m. & at which time I discontinued.

K 27.

Expenses:

Carfares Wash. & N. Y.	.25
R. R. Fare & Pullman tip	10.52
Meals	3.00
Phones	.00
	$13.87

One day."

310 GOVERNMENT'S EXHIBIT No. 291."

"*Special Report.*

Washington, D. C., Tuesday, October 25, 1927.

"N. Y. Operating 5023.

Phila. Investigator—L 36 Reports:

Continuing on the above operation at 12.30 P. M. I took up watch in vicinity 5th & D Sts. N. W. and subject came out at 12.50 P. M. and proceeded to 3rd and D Sts. N. W. and entered a Chevrolet Sedan, District of Columbia Registration M 689 and drove to his home 1013 Eighth St. N. W.

and entered. He came out at 1.20 P. M. and drove above car, Dist. of Col. Reg M-689, to 3rd & D St. N. W. parking said car and entered Court House.

At 3 P. M. sharp subject came out of court house and walked to 3rd & D St. N. W. and entered said car Dist. of Col. Reg. M-689 and drove to Somerville's Brass Works on 13th St. below D Sts. and parked said car. I observed a man with blue suit and black soft hat about 6 ft. tall and 200 lbs. weight in vicinity of subject's place of employment and again at 14th & D St. where he looked my car over. I drove around several times and said man remained in this vicinity until at 5 p. m. when Chev. Sedan Dist. of Col. Reg. M-689 and man disappeared.

Subject came out of place of employment Somerville Brass Works at 5.35 P. M. and entered his own car Oldsmobile Touring Car District of Columbia Registration Q-5818 and drove to his home arriving there at 5.45 P. M.

I noticed a man about 5 ft. 10 in slender built light gray coat and hat and blue suit hanging in vicinity of subject's residence and at times leaning against fence at 10.15 Eighth St. This man remained until at 7.45 P. M. and even remained after subject left in his machine. Owing to traffic conditions I lost subject's car and returned to vicinity of his home to wait for his return and this man remained in vicinity until 8.30 P. M. when he disappeared. Subject returned at 9.40 P. M. and entered his home 1013 Eighth St. where he remained for balance of evening. I parked my car at 1007 Eighth St. remained on watch for subject until 3 A. M. and seeing nothing more of him and his car was parked outside of his home I returned to the hotel at 3.30 A. M. and discontinued for the day.

	L-36
Expenses:	
Room	5.00
Meals	3.00
Week Ending Telephone	1.40
Laundry	3.20
Auto Trailing & Waiting, 72 miles	12.24
	$24.84

(1-½)"

311 GOVERNMENT'S EXHIBIT No. 292."

C. G. R.
"N. Y. Opt. # —.
N. Y. Inv. M 20 Reports:

Wash., D. C., Oct. 25, 1927.

Continuing on this matter I held myself in obeyance all day and at 9 P. M. I proceeded to the vicinity of #1637 U St. S. E. for the purpose of placing jury #5 under surveillance.

At about 10.30 p. m. a man I believe might be the Barber entered the house.

A man who came out of a nearby house & got into Auto #69177 Dist. Col. 1927 seemed very much worried about me. He followed me with his car & finally drove to a police sergeant who was parked two blocks away. The copy told me that the man said "I was a suspicious character." The cop questioned me name address & etc. & told me that strangers on the street out there after 11.30 P. M. are picked up. The cop was going to take me in, but he changed his mind. He followed me in his car until I boarded a street car & then he followed the car a short distance.

I rode to Union Station then taxied to the Wardman Park where at 1 a. m. I talked with Mgr. C. G. R. It was 2 a. m. when I retired.

During the day I moved to the Wardman Park Hotel, R 103 D.

I used three taxi today Union Station to Hotel,—Hotel to U St., Union Station to Hotel.

	M 20.
Subsistence	$8.50
3 taxis	6.25
Carfare	.16
Phone	.20
17 hours.	$15.11

(1-½)"

"GOVERNMENT'S EXHIBIT No. 293."

"Rubber stamped: "New York Office, Oct. 27, 1927. F. M. K.

Tues., Oct. 25, 1927.

"N. Y. Opp. 03 reports:

Acting under instructions of Mgr. C. G. R. I remained at Hotel until further orders. At 1.00 p. m. Mgr. C. G. R. came to Hotel and instructed me to take next train for N. Y. At 2.30 I boarded train and proceeded to N. Y.

Time 1 day.

Expenses:

Meals		1.00
Lunch		1.00
Supper		1.00
	Train fare & Pullman Chair	10.00
312	Pullman tip	.25
	Total	$13.25

Also rubber stamped:

New York Office, Oct. 27, 1927. Read W. S. B."

One day."

(Time stamp "11.30 Oct. 27/27" on reverse side.)

"GOVERNMENT'S EXHIBIT No. 294."

C. G. R.

Tuesday, 10/25/27.

"#014

N. Y. 5023.

Continuing on the above operation at 12.01 a. m. as assistant to Mgr. C. G. R. I worked until 2.20 a. m. and temporarily discontinued.

I resumed my work at 8 a. m. and continued on the duties assigned me until 12 mid-night at which time I discontinued.

Hotel	5.00
Taxi	5.90
"	.85
"	.70
"	3.60
"	.85
"	.90
"	.55
Meals	3.40
Gratuities	.60
Phones	.65
	$23.00"

Time (1-½)

"GOVERNMENT'S EXHIBIT No. 295."

"(Letterhead of Mayflower Hotel)

Wash. D. C. Tuesday, Oct. 25, 1927.

"Philadelphia Investigator S 70 Reports:

Continuing on the above operation I met Mr. Simmons by appointment at 11 a. m. and together we proceeded to the Cafritz office in an effort to locate and meet Subject Burr. We learned he was out with a prospect and his return was indefinite.

Simmons then introduced me to a couple of boys, who he thought I would be interested in.

I was engaged in this way all day.

At 7 p. m. I called Mgr. C. G. R. and was in-
313 structed to return to Philadelphia, first seeing Mr. O'Reilly at his Hotel.

After seeing Mr. O'Reilly I returned to my Hotel at 9 P. M. Check out and returned to Philadelphia.

Expenses:

Hotel	5.00
Subsistence	3.00
Telephone	.20
Taxicab	.80
Train fare	4.90
Sleeper	3.50
	$18.40
	17.40"

(L.)

"GOVERNMENT'S EXHIBIT No. 296."

Tues., Oct. 25/27.

"W. S. B.
"New York Operating
New York Investigator S81 Reports:

Continuing upon the above operation, acting under the instructions received of Mgr. C. G. R. I held myself in obeyance at hotel room since 8.00 A. M.

At 1.00 P. M. Mgr. C. G. R. instructed me to check out of the Pennsylvania Hotel and check into the Wardman Park Hotel, which I did, in doing so incurring a taxi bill of $1.45.

At 8.30 P. M. I was given instructions to proceed to the vicinity of #1749—18th St. N. W., which address is a redstone 3 family house. Upon arrival there I noticed the subject's car P-993, a Chevrolet, standing on street near the subject's house. I also noticed lights on bottom floor of the house.

Between 9.00 P. M. and 11.35 P. M. the only person entering or leaving was an elderly lady.

At 11.35 P. M. I noticed a man come from the house whose description as best as I could get because of the darkness is as follows—5 ft. 8½ in. tall, medium build, about 140 lbs. wearing a brown soft snap-down brim, dark overcoat and a dark suit.

This man walked over, and got into the Chevrolet and drove off down 18th St. N. W. I was unable to get a cab to follow but saw him take a turn two blocks down.

I then returned to the house and took up surveillance. In about 10 minutes I noticed the subject come walking up the street and enter house.

At 12.05 P. M. I noticed lights in house extinguished. I remained in the vicinity until 3.00 A. M. but no one left house up to this time.

314 I then discontinued and returned to Hotel as per instructions received.

Expenses:

Taxi Bill	1.45	
Subsistence	8.50	
Phone	.20	
Carfare	.40	(1-½)
Tip to Porter	1.25	
Incidentals	.50	
	$12.30"	

"GOVERNMENT'S EXHIBIT No. 297."

"*Special Report.*

"N. Y. Operating #5023.
Phila. Investigator X-12.

Washington, D. C., Tuesday, Oct. 25th, 1927.

Continuing on above operation at 9.00 A. M., I carried out the duties assigned me.

Discontinuing at 12:00 midnight

Expenses:

Hotel	6.00	
Meals	3.80	
Taxi	2.20	(1 ½)
	$12.00"	

Thereupon the witness was handed papers marked Government's Exhibits for Identification 298 to 303, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 26, 1927, which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: Same objection.

The Court: Same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 298."

"*Special Report.*

Washington, Wednesday, Oct. 26, 1927.

"N. Y. Optg. #5023.

Mgr. C. G. R. Reports:

Continuing on above I was actively engaged in di-
315 recting operation from 7 a. m. to 12.00 midnight.

Expenses:

Hotel	6.00	
Meals	4.20	(1 ½)
Taxi	5.40	
Telephone	1.40	
Laundry	2.15	
	$19.15"	

"GOVERNMENT'S EXHIBIT No. 299."

"*Special Report.*

"N. Y. Operating #5023.

Philada. Investigator L-36 Reports:

Washington, D. C., Wednesday, October 26, 1927.

Continuing on the above case I took up watch for subject in vicinity of court house at 2.35 P. M. and subject came out at 3.10 P. M. and proceeded to 3rd St. above D, N. W., where he entered his car Oldsmobile touring, District of Col. Registration Q-5818 and drove to 5th and Massachusetts Ave. where he pulled into a gas station and got gas and oil in his car. He then drove to his home 1013—Eighth St. N. W., and as both sides of Eighth were crowded with machines he drove around the block and past his home again and parked his car on L St. below Eighth St. and walked back to the house next door to his home 1015 Eighth St. and sat on the bench in front yard in company with his wife, children and the woman occupant of this house. He remained here until at 4.30 p. m., his wife left and went into her house 1013 Eighth and at 4.50 p. m. subject went next door and entered.

At 6.20 P. M. subject, wife and children came out and entered the subject's Oldsmobile touring car and they went for a ride thru Anacostia and out in the country.

Subject stopped along road as something was matter with his motor. He lifted left side of hood up and tinkered with the motor for about five minutes and then drove back to Washington, D. C., arriving home at his home 1013 Eighth St. at 8.40 P. M. and subject and wife and children entered house.

The lights were extinguished at 9.05 P. M. and I remained on watch until 3 a. m. and saw nothing further of subject or anyone entering subject's house.

I returned to the hotel at 3.30 A. M. and discontinued for the day.

L.36.

Expenses:	
Room	5.00
Meals	3.00
Telephone	.40
Auto trailing and waiting 81 miles	13.77
Suit pressed	.75
	$22.92"

1 1/2.

316 "GOVERNMENT'S EXHIBIT No. 300."

"C. G. R.

"N. Y. Opt. #

N. Y. Inv. M 20 Reports:

Wash., D. C., Oct. 26, 1927.

Continuing on this assignment I reported to C. G. R.'s suite at 11 a. m. in the afternoon I went to the Court House and acquainted myself with the appearance of #5.

Shortly after 3 P. M. my subject came out of the Court House with the others. I saw him on the street from the opposite side and when I crossed over to the side he was on I could no longer see him. I do not know whether he got into one of the many autos parked at the court or got on a street car, however I lost him.

I proceeded to the vicinity of Kneesi Luggage Shop at #409 7th St. N. W. where he is employed (2 blocks from

Court House) & I remained there until 6 P. M. I did not see my man.

I then rode out to 'U' Street where the subject lives. I stayed here a short while & then proceeded to the hotel & reported to Mgr. C. G. R.

At 8.15 P. M. I rode with Inv. 0-14 to Campbells Corners —Congressional Country Club in search of auto #P1738 Dist. of Col. 1927—After a thorough search of this district and not finding the car we returned to the center of the city.

At 11 P. M. we spotted the above car a few squares away from the D. of J. Bldg. It continued to this Bldg. & 2 women got in. The car then rode to the Ward Apts. on S St. near 3 St. N. E. One of the ladies got out. The next stop was the Fardoy Apts. Irving & 15th St. N. W. The other lady got out.

The subject then drove to the alley in the rear of the Carnegie Institute of Washington. He put up the car & then entered #1409 15th St. N. W. in at 11.55 P. M.

At 1 A. M. I reported to Mgr. C. G. R. & then retired to my room.

13 hours.	M-20
Subsistence	8.00
Phone	.15
Carfare	.32
Incidentals	.40
	$8.87."

"GOVERNMENT'S EXHIBIT No. 301."

"C. G. R. Wednesday, 10/26/27.
"814
N. Y. 50023.

Subject H. R. Lamb

"Continuing on the above subject at 6.30 A. M. I
317 left my hotel and went to the Glassman Rent-a-car Co. and hired a car for trailing purposes.

I arrived at subject's home at 7.35 A. M. and took up a position where I could see anyone leaving or entering the house.

At 9.10 A. M. a man answering Operators L36 description left the house. I trailed him to the Racquet Club where I presume he had breakfast.

He came out at 9.45 A. M. and went directly to the D. of J. Building.

I joined Mgr. C. G. R. at this place and time and when subject came out at 1.30 noon I gave Mgr. C. G. R. the spot on him.

At 4.25 P. M. I returned to the D. & J. Building and met Mgr. C. G. R. and we picked up the subject coming out at 4.30 P. M. I trailed him directly to his home.

At 4.45 subject drove out a side alley entrance on P St. from the rear entrance of his home. I followed him at a safe distance.

Subject stopped at a gas station in the 3300 block out Conn. Ave. and purchased 10 gals. gas 1 oil—had car greased all around and air pumped into shoes.

He then drove out and reached Illinois Ave. and proceeded west to stop '8' where he turned south.

Subject stopped at various points one time for 50 minutes and kept looking back over the road as though expecting some one.

He finally reached Campbells Corners where he stopped. I was forced to pass him. I went over on him and turned back on foot. Subject was then driving southeast.

I followed and found this road led to the Congressional Club 'Country Club' about twenty miles from the city.

I attempted to enter the grounds but was stopped being asked if I was a member. Unable to gain entrance in a car and having been looked over by the door man I drove back to the cross-roads.

I waited for one hour but no one drove out.

I then returned at once to the hotel and got Operator M-20 to return with me to the grounds of this Club so that he could proceed on foot and check the cars parked thereon.

Upon examination he could not find subject's car and also found another road leading out of the rear grounds of the club.

318 We returned to the city and enroute picked subject's car up in traffic.

We trailed him until 11.15 P. M. at which time he met two women at the D. of J. building and after a ride of about

an hour he drove these girls to their home. Addresses of these women given in M-20's report.

He then drove to his home and put the car in the garage to the rear of his house.

I remained in the neighborhood until 1.30 A. M. but subject did not come out again.

All lights went out in the front room at 1.05 A. M.

I returned to my hotel and disc. at 2.20 A. M.

Expenses:

Hotel	5.00
Taxi	.85
Meals	3.00
Phone	.45
Gratuities	.55
Mileage (97)	19.06
	$28.91."

Time—.

"GOVERNMENT'S EXHIBIT No. 302."

"W. S. B.

"New York Operating #—.

New York Investigator S81 Reports:

Wed., Oct. 26 27.

Continuing upon the above operation, pursuant to the instructions received of Mgr. C. G. R. I left hotel at 11.00 A. M. and went to the Motor Vehicle Dept. where after hiring a car, for which I incurred an expense of $3.00 got a D. C. license.

I then proceeded to vicinity of the Cafritz Co. on K St. where I took up surveillance and held same until 4.45 P. M. but did not see car #P-993 parked around.

I then went to vicinity of subject's home at #1479 18th St. N. W., upon arrival here, noticed car standing in front of the house. At 8:15 P. M. subject came from the house, entered the machine and drove off, followed by operative.

He drove to #1447 Chapin Street, where he parked car and entered the building.

An hour later he came out, accompanied by another man about 5 ft. 7 in. 150 lbs., thick set, wearing a grey felt hat, dark overcoat, and suit—Both got into car and drove off, down to 14th St. N. W., to Park Road where they parked machine and went into the Arcade Bowling Alleys.

At 10.20 P. M. they came out, entered machine and
319 drove off, up 14th Street, N. W. to 15th St. N. W., which is a dark and practically deserted street.

They stopped their motor, and sat talking in car, until 11.35 P. M. when the man with the subject, left car and walked to, and entered #1447 Chapin Street.

The subject then drove car to home and entered his house. At 12.10 P. M. the lights in the house were extinguished. I remained in vicinity until 3.00 A. M. then discontinued & returned car to garage.

License and car rent	6.00 (to get license.)
Expenses—car fare	.16
Subsistence	8.00
Car bill	8.06
Incidentals	.50
Phone call	.05
	$22.77"

1½.

"GOVERNMENT'S EXHIBIT No. 303."

"Special Report.

"N. Y. Operating #50023.

"Phila. Investigator X-12:

Wash., D. C., Wed., Oct. 26th, 1927.

Continuing on the above operation at 9.00 A. M., I resumed duties assigned me—discontinuing at 12.00 midnight.

Expenses:

Hotel	6.00
Meals	3.80
Taxi	1.40
	$11.20"

(1½.)

Thereupon the witness was handed papers marked Government's Exhibits for Identification 304 to 309, inclusive, which he identified as being the original handwritten reports of the witness and the operatives for October 27, 1927 which were sent to Sherman Burns on October 29, 1927.

Thereupon the following occurred:

Mr. Crim: The same objection.

The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 304."

320 "*Special Report.*

Washington, D. C., Thursday, October 27, 1927.

"N. Y. Optg. #5023.

Mgr. C. G. R. Reports:

Continuing on the above, I was actively engaged in directing operations from 7.00 A. M. till 12.00 midnight.

Expenses:

Hotel	6.00
Meals	4.35
Car Hire	5.20
Gratuity	2.00
Phone	2.35
	$19.90"

"GOVERNMENT'S EXHIBIT No. 305."

"Hotel Harrington, Washington, D. C.

Washington, D. C., Thursday, October 27, 1927.

"N. Y. Operating 5023.

Philada. Investigator L—36 Reports:

Continuing on the above operation pursuant to instructions from Mgr. Mr. Ruddy, I took up watch in vicinity of court house at 2.30 P. M. and observed subject to come out of said court house at 3 P. M. sharp and proceed to his

car which was parked on 3rd St. above D St. He entered said car and drove south on 3rd St. to Maryland Ave. west on Maryland Ave. to 7th St. north on 7th St. ½ block to Smithsonian Institute and entered park driving past the said Institute to 13th St. north on 13th St. to the Somerville Brass Works below D St. and entered.

I remained on watch and at 5.25 P. M. subject came out and drove his car east on D and Penna. Ave. north on 6th St. to Mt. Vernon Place west to Eighth St. North on 8th St. and parked his car in front of 1019 Eighth St. N. W. and entered his home at 1013 Eighth.

I observed subject and two women in parlor of subject's residence at 7.30 P. M. when they all remained until 10.25 P. M. when the lights were extinguished and switched on upstairs for about 10 minutes. After 10.35 P. M. the house was in total darkness.

During the evening a Chevrolet touring car bearing Maryland Registration 207-501 was parked opposite subject's house for about one hour and driver remained at the wheel.

A sedan car with woman and man in front seat was moving up and down the block subject lives on, numerous times and parking below above and opposite subject's home although no one entered or left said car. The car bore

District of Col. Registration M-6748.

321 About 10.30 P. M. a Packard Sedan District of Col. Registration H-1874 pulled up in front of subject's house and parked for about 15 minutes. No one was in said Packard except driver. He then moved up and down street with car and disappeared.

I remained on watch in vicinity of subject's home until 3 A. M. and returned to the hotel at 3.30 A. M. and discontinued for the day.

L-36.

Expenses:	
Room	5.00
Meals	3.00
Store 6 nights	6.00
Phones	.30
Mileage 63 miles	10.71
	$25.01"

(1½.)

"GOVERNMENT'S EXHIBIT No. 306."

"C. G. R.

Washington, D. C., Oct. 27, 1927.

"New York Opt.

New York Inv. M20 Reports:

Continuing on this matter I reported to Mgr. CGR at 11.15 A. M. & then I proceeded down town to the vicinity of the court house.

I saw the subject return at 1.30 P. M. & then I knew that there was an afternoon session. (Jurors were out last Friday afternoon.)

At 2.55 P. M. subject #5 left the court house. He walked to 5th & G Sts. N. W. boarded a trolley car & rode to North Capitol & L Sts. N. E. He walked to and entered the Topham Leather Good Factory at #80 L St. N. E.

I covered the door that the subject had entered through until 7 P. M. & failed to see him again.

The factory runs through to Pierce St. & has an outlet there. At 5 P. M. 2 of the light delivery trucks belonging to the Company pulled away with men in them.

I could only look into one of the trucks and in that one I did not see my subject.

After talking with Mgr. C. G. R. I retired to my room and held myself in obeyance until midnight.

	M 20.
Subsistence	$8.00
Carfares	.40
Phone	.25
	$8.65"

(1½.)

322 "GOVERNMENT'S EXHIBIT No. 307."

"C. G. R.
"#014.

Thursday, 10/27/27.

N. Y. 5023.
H. R. Lamb—

Continuing on the above subject at 3 p. m. I went to the D. of J. building and awaited subjects leaving.

At 5 p. m. subject had not as yet come out.

At this time I called the office and by using a suitable pretext learned that subject had left the office early in the afternoon.

I went at once to the neighborhood of his home and took up a position of surveillance of both house and garage alley entrance.

Subject did not appear up until 9 P. M.

At this time I drove to the homes of the two women in subject's company last night but could not find his car in the neighborhood of their homes.

At 11.30 P. M. I returned to subject's home and made check of his garage and found the same still locked as it was at 5.15 P. M. giving me belief that the car was not out.

I kept surveillance at the house until 2.30 A. M. but no one either left or entered same during this time.

I returned to my hotel and disc. at 2.55 A. M.

Expense:

Hotel		5.00
Meals		3.00
Phone		.30
Time	Grat.	.25
(58 miles) Car hire		11.35
		$19.90"

"GOVERNMENT'S EXHIBIT No. 308."

"W. S. B. (Burr.)

Thurs., October 27.

"New York Operating.

New York Investigator S81 Reports:

Continuing on above mentioned operation, acting under the instructions received of Mgr. C. G. R. I left hotel at 1.60 P. M. and went to the Heltz station where I engaged a car.

I then made a trip to vicinity of subject's home on
323 18th Street, N. W. but did not see car license #P-993 around. I then went down town and at 3.10 p. m. picked up subject's car standing on the corner of H St. N. W. and 14th St. N. W.

I kept car under surveillance and 20 minutes later, subject came walking down 14th St. N. W. and entered car, driving to Evans Bldg. #1420 New York Avenue, where he parked car and entered the building.

A half hour later he came out, and entered car, drove to the Post Office on 14th St. N. W. came out shortly and drove to the "Colorado" which is a large office Bldg. on the corner of N. W. G St. & 14th St. N. W.

I was unable to find out where he went in the building because by the time I had parked car, he had disappeared in one of the elevators.

He came from this building at 5.20 P. M. and drove to his home on 18th St. N. W.

At 8.10 P. M. he came from house, entered car, and drove off to #1447 Chapin St. (See report of Oct. 26 for details of this address) where he parked car and entered the house.

Subject, and the man he was with last night, came from the house at 9.50 P. M. and drove to the Arcade Bowling Alleys, on 14th St. N. W. and Park Road where they entered.

At 11.45 P. M. subject came out, with his friend and drove off to 1447 Chapin St. where after holding a short conversation, while sitting in the car, the friend got out and entered house, while subject drove off down 14th Street to 18th Street, N. W. to his home where he entered

at 12.35 A. M. I noticed lights in the house extinguished at 12.55 A. M.

I remained in the vicinity holding house under close surveillance until 3.00 A. M. at which time I discontinued, after taking car back to Hertz Station— As street car service is almost all suspended at this time of the morning I took cab to hotel for which I incurred an expense of $1.15.

S-81.

Expense:

Car fare	.16
Subsistence	8.00
Car bill	9.34
Taxi bill	1.15
Incidentals	.50
Total	$19.15"

(1½.)

"GOVERNMENT EXHIBIT No. 309."

Special Report.

Washington, D. C., Thursday, Oct. 27, 1927.

"New York Operating #5023.
Phila. Investigator X-12.

324 Continuing on the above operation at 9.00 A. M.— I resumed duties assigned me—discontinuing at 12.00 mid.

Expenses:

Hotel	6.00
Meals	3.80
Taxi	1.30
	$11.10"

(1½.)

Thereupon the witness continued as follows:

Government's Exhibit 273 is my own report for October 24th. It refers to a trip that I made to Philadelphia

in connection with this operation. I left on Sunday and returned on Monday morning. I was in Philadelphia on Sunday, the day preceding the writing of that report.

Thereupon the witness was handed papers marked Government's Exhibit for Identification 310, which he identified as being the reports of operative M-20, Merritt, for October 28, 29, and 30, they being duplicate reports written after the seizure of the other records at the Wardman Park Hotel, to keep the records straight because the originals were seized.

Thereupon the following occurred:

The Witness: The men wrote these from memory so as to keep our records straight, and get the reports written from memory. You have the original handwritten reports of these dates already in evidence.

Mr. Gordon: You say that is the handwriting of Merritt?

The Witness: It is, but that is not the original report that he wrote directly. He discontinued for each of those dates. There might be some changes, because he was writing from memeory.

Mr. Gordon: I offer paper marked Government's Exhibit for Identification 310, being the reports of Merritt for October 28, 29, and 30, and ask that they be given exhibit numbers 310, 310-A and 310-B.

325 Mr. Crim: The same objection.

Mr. Douglas: We object also.

Mr. Hoover: And there is a further objection. I take it your Honor has heard the testimony of the witness there who says that these reports which have now been marked 310, 310-A and 310-B, respectively, are the reports which the men made from memory in order to have their records complete after the original reports made by the men had been seized by the Government under the search warrant which had been issued to it by the United States Commissioner. I cannot see upon what theory such a report would have any probative force in evidence in this case. And we object to them on the further ground that they are not relevant at all.

Mr. Douglas: I object also on the same ground stated by Mr. Hoover, and I think they are also objectionable on the ground that these people cannot be compelled to

give testimony against themselves, and, therefore, that this evidence, documentary in character, without their consent is not admissible in evidence here.

Mr. Gordon: These were not seized by the Government. They were brought down by Sherman Burns personally.

Mr. Douglas: Well, they were brought as the result of a subpœna duce tecum.

The Witness: They were not sent to Mr. Burns until about the third or fourth of November. The originals of these were taken under the search warrant. And then to keep the records straight, your Honor, I asked the men to make out other reports from memory.

The Court: Well, the fact that they were made from memory goes to their weight and not to admis-
326 sibility. Objection overruled.

Mr. Douglas: Exception.

Mr. Hoover: Note an exception, if your Honor please.

The Court: Of course I did not hear anybody object because they are not the best evidence I am not understood as ruling on that.

Mr. Crim: If your Honor please, Mr. Hoover tells me that in your court it is necessary to note an exception each time after the objection is overruled. My experience has been that ordinarily that is automatic. May I have an exception where I have objected?

The Court: I think it will save everybody the trouble, certainly the counsel for the respondents, the trouble if it could be understood that as to all documents of the same character, subject to the same objection and the same rulings that have been made, it will be understood as they are put in that objections are made and the ruling has been made and the exception is preserved without the exception being repeated. Now, of course, that is where there is no new ground of objection interposed, as Mr. Hoover has interposed one just now. I want that stated to me before you go in under this suggested arrangement which is very common here, Mr. Crim.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 310."

"*Duplicate Report.*

C. G. R.

Washington, D. C., Oct. 28, 1927.

"N. Y. Opt. #5023.

"N. Y. Inv. M-20 Reports.

As my original report for this date and also for the 29th & 30th have been seized by the Govt. men I am writing this and the following two reports from memory
327 as I have kept no notes on this assignment.

Today I reported to Mgr. C. G. R. before noon & then I proceeded to the center of the city. I purchased a camera & film for which I was taxed $13.00 same to be used on this operation.

In the afternoon, Inv. Phila. L36 met me with car. When subject #4 left the court house we placed him under surveillance.

The subject went to his car which was parked at 3 & D St. He rode to a house, if I remember correctly, at #121-123 11th St. S. E.

He remained here awhile and then drove to a house at #49 New York Ave. where he entered remained awhile & then proceeded to his home on 8th St. N. W.

I believe the subject came out in the evening about 7 P. M. & we lost him in traffic. At 9 P. M. he was home.

Inv. L36 & I covered the house till about midnight & as we did not see the subject we discontinued for the day & reported to Mgr. C. G. R.

M20.

My expense for this date was	$22.06
Subsistence	8.50
Camera	13.00
Carfare & phone	.56
	$22.06"

1½.

"GOVERNMENT'S EXHIBIT No. 310-A."

Duplicate.

C. G. R.

Wash., D. C., Oct. 29, 1927.

"N. Y. Opt. #5023.
N. Y. Inv. M20 Reports.

Continuing on this matter I arose at 6 a. m. & later met Phila. Inv. L36. We proceeded to the vicinity of subject #4's home—His car G5818 was not there so we went to the vicinity of his place of business we located the car parked on 13½ Street in the rear of the place in which he is employed.

During the morning I reported to Mgr. C. G. R. at the Wardman Park Hotel & later returned to 13½ St. At about noon N. Y. O14 joined me with automobile & we held the subject's car under surveillance.

At 4 P. M. the subject left the place where he is employed he got into his car & drove direct to his home.

It was about 7 P. M. when the subject again got into his car, he drove to a line of autos which led to a nearby gasoline station where with a purchase of 5 gallons gas a
328 gallon of oil was given free.

After getting his gas & oil the subject drove to his home—About 7.45 P. M. he entered.

Inv. O14 & I held surveillance until 12.30 A. M. & as we did not see the subject again we returned to the hotel & reported to Mgr. C. G. R.

It was about 1.30 A. M. when I discontinued.

My expenses today was $11.68 itemized I believe as follows:

Subsistence	$8.50
Laundry	2.40
Carfare & phone and incidentals	.78
	$11.68"

M20.

"GOVERNMENT'S EXHIBIT No. 310-B."

"*Duplicate.*

Washington, D. C., Oct. 30, 1927.

C. G. R.
"N. Y. Opt. #5023.

N. Y. Inv. M20 Reports:

Today at about 6.45 A. M. Inv. O14 & I left the hotel & proceeded to the vicinity of subject #4's home.

His car was parked in the same spot that it was in when we left last night.

During the late morning the subject come out of the house & tinkered around the car.

At about 2.20 P. M. the subject, an elderly man a woman & children got into the car.

They drove out in the country & stopped on Pine Street (#10 I believe) & entered. This is in the Silver Springs Section.

I think it was about 5 P. M. when the subject & his party left the above house & reentered the car. They drove to the subject's home on 8th St. & all entered.

At 9.45 P. M. the subject came out of the house & walked to a store on 9th St. where he had a malted milk. He returned immediately to his home.

As Inv. O14 nor I did not see the subject again up to 11.30 P. M. we turned in our car & returned to the hotel via taxi.

After reporting to Mgr. C. G. R. I retired to my room & discontinued at 1.00 a. m.

		M20.
329	Subsistence	8.50
	Taxi	1.20
		$9.70"

Thereupon the witness was handed papers marked Government's Exhibits for Identification 311, 311-A and 311-B, which he identified as being the reports of operative S-81, Steer, for October 28, 29 and 30, written from memory

after the seizure of the original reports by the Government on October 31, and sent to Sherman Burns around the 3rd or 4th of November.

Thereupon the following occurred:

Mr. Douglas: I object on the same ground as the last objection.

Mr. Crim: Same objection.

Mr. Hoover: The same objection.

The Court: Same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 311."

"*Duplicate.*

Wardman Park Hotel, Washington, D. C.

W. S. B.

"New York Operating #5023.

New York Investigator S-81 Reports:

Friday, Oct. 28-27.

Due to the fact that my report of this date and the two following days, were seized by Government men, I am requested to write duplicates.

As I did not keep any notes on this matter, I am unable to write a detailed report.

On this day, I reported, as usual, to Mgr. C. G. R. I then engaged an automobile had subject under surveillance during the day, and, after he arrived home in the late evening, I held surveillance until 3.00 A. M. at which time, I turned in car, and discontinued as per instructions received.

Expenses: Time 1½ days.

Thereupon the witness was handed papers marked
330 Government's Exhibits for Identification 312, 312-A and 312-B, which he identified as being his own reports for October 28, 29 and 30 and which were sent to Sherman Burns several days after the first of November.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 312."

"Wardman Park Hotel.

Washington, D. C., Friday, Oct. 28th, 1927.

"New York Operating #5023
Manager C. G. R. Reports:

Continuing on above operation, I directed operations from 8.30 A. M. till midnight.

Expenses:

Hotel	$6.00
Meals	4.25
Taxi	6.20
	$16.45"

"GOVERNMENT'S EXHIBIT No. 312-A."

Wardman Park Hotel.

Washington, D. C., Saturday, Oct. 29th, 1927.

"New York Operating #5023

Manager C. G. R. Reports:

Continuing on above operation, I directed operations from 9.00 A. M. till midnight.

Expenses:

Hotel	6 00
Meals	4 30
Local & L. D. Phones	3 05
Taxi	4 70
	$18 05"

"GOVERNMENT'S EXHIBIT No. 312-B."

"Wardman Park Hotel.

Washington, D. C., Sunday, Oct. 30th, 1927.

"New York Operating #5023
Manager C. G. R. Reports:

Continuing on the above, I directed operations from 9.00 A. M. till midnight.

Expenses:

Hotel	6 00
Meals	4 20
Telephone	1 30
Taxi	4 90
	$16 40"

331 Thereupon the witness was handed papers marked Government's Exhibits for Identification 313, 313-A and 313-B, which he identified as being the reports of operative X-12, Robbins, for October 28, 29 and 30, and which were sent to Sherman Burns around the fourth or fifth of November.

Thereupon the following occurred:

Mr. Crim: The same objection.
The Court: The same ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 313."

"Wardman Park Hotel, Washington, D. C.

N. Y. Optg. #5023.

Phila. Investigator X-12 Reports:

Friday, Oct. 28, 1927.

Continuing on above, at 6.30 A. M. I carried out instructions of Mgr. C. G. R., discontinuing at midnight.

Expenses:

Hotel	$6.00
Meals	3.00
Taxi	3.50
	$12.50"

"GOVERNMENT'S EXHIBIT No. 313-A."

"Wardman Park Hotel, Washington, D. C.

N. Y. Optg. #5023.

Phila. Investigator X-12 Reports:

Saturday, October 29th, 1927.

Continuing on above at 9.00 A. M. I carried out all duties assigned me by Manager C. G. R., discontinuing at midnight.

Expenses:

Hotel	$6.00
Meals	3.50
Taxi	4.20
	$13.70"

"GOVERNMENT'S EXHIBIT No. 313-B."

"Wardman Park Hotel, Washington, D. C.

N. Y. Optg. #5023.

Phila. Investigator X-12 Reports:

Sunday, Oct. 30, 1927.

332 Continuing on above, at 9.00 A. M. I proceeded to carry out duties assigned me by Mgr. C. G. R., discontinuing at midnight.

Expenses:

Hotel	$6.00
Meals	3.20
Taxi	3.50
	$12.70"

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 314, which he identified as the handwritten report of operative O-14, Frank J. O'Reilly, for October 28th written to take the place of the original which was seized by the Government, and which was later sent to Sherman Burns.

Thereupon the following occurred:

Mr. Crim: Same objection.

Mr. Douglas: I object to it upon the other grounds heretofore stated, your Honor.

The Court: Overruled.

Mr. Brandenburg: We object.

The Court: I have already indicated what the course is going to be, and you make your objection and save an exception, it goes in under the objection, under the ruling and the exception is reserved to the ruling.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 314."

"*Duplicate as to Memory.*"

C. G. R.
" #014.
N. Y. 5023. H. R. Lamb.

Friday, 10/28/27.

Continuing on the above surveillance I left my hotel at 10.15 A. M. and hired a 'drive it-urself car.'

All during the day I attempted to pick up a trail on the subject. At 3.50 P. M. I went to the neighborhood of the D. of J. Building and awaited subject's coming out.

333	Subsistence	$8.50
	Cab bill	1.20
Incidentals		.25
Carfare		.08
Phone call		.05
Car rental		10.16
	Total	$20.24"

"GOVERNMENT'S EXHIBIT No. 311-A."

"*Duplicate.*

Wardman Park Hotel, Washington, D. C.

W. S. B.

"New York Operating #5023.

New York Investigator S-81 Reports:

Sat., Oct. 29, 1927.

As explained in yesterday's report, I rendered this report as a record for our files.

Today, I again had subject under surveillance, but no connections were made. I had engaged car, and held surveillance from 3.00 P. M. until 3.00 A. M. I discontinued after returning car to garage and arrived at my hotel at 4.00 A. M.

Expenses:

Incidentals	.35
Subsistence	8.50
Car fare	.08
Phone call	.05
Cab bill	1.15
Car rental	9.47
Total Exp.	$19.60"

Time 1½ days.

"GOVERNMENT'S EXHIBIT No. 311-B."

"*Duplicate.*

Wardman Park Hotel, Washington, D. C.

W. S. B.

"New York Operating #5023.

New York Investigator S-81 Reports:

Sunday, Oct. 30/27.

Being as accurate as possible, on this report, the subject drove out to 'Petworth' which is a real estate development

of the Cafritz Company by which company the subject is employed.

Subject returned to his home at 6.00 P. M. and left again at 6.30 P. M. and returned to 'Petworth' where he remained until 9.00 P. M. and then proceeded to his home. I maintained surveillance today from 3.00 P. M. until 3.00 A. M. Then discontinued, after returning car to garage.

Expenses:

Subsistence	8.50
Car fare	.08
Phone calls	.05
Cab bill	1.20
Car rental	8.07
Incidentals	.30
	$18.20"

Time 1½ days.

334 At 4.30 P. M. he had not appeared. At this time I went at once to the neighborhood of his home and kept subject's house under surveillance until 9.30 P. M.

At this hour I started a cruise of the city in the hope of finding subject's car.

At 1? P. M. I returned to the neighborhood of his house and found no evidence that he had come home.

At this time I called his home on the telephone and by using a suitable pretext learned from the woman who answered that Mr. Lamb was in Virginia and would return on Monday 10/31—noon. The absence of his car from the garage last night and tonight gave evidence of this.

I returned to the hotel and disc. at 12 midnight.

Time (1½.)

Expenses: $14.90."

Thereupon the witness was handed a paper marked Government's Exhibits for Identification 315 and 316, which he identified as the handwritten reports of operative O-14, O'Reilly, for October 29th and October 30th, respectively, written to take the place of the originals, which were seized by the Government.

Thereupon an objection was made and an exception duly noted.

Thereupon the Government introduced in evidence the following:

"GOVERNMENT'S EXHIBIT No. 315."

"*Duplicate as to Memory.*

C. G. R.
"#014.
N. Y. 5023.

Saturday, 10/29/27.

Surveillance Juror #4.

Upon instructions received from Mgr. C. G. R. I left my hotel at 10.20 A. M. and met N. Y. Operator M-20 at noon.

We held surveillance of the man until past midnight and for detailed report of subject's movements refer to M-20's report in detail.

We disc. at 12.15 past midnight. A car was engaged for the operation.

Time 9 1/ 1/2)
Expense $25.47."

335 "GOVERNMENT'S EXHIBIT No. 316."

"*Duplicate as to Memory.*

"#014.
N. Y. 5023.

Sunday, 10/30/27.

Surveillance Juror #4.

Continuing surveillance of the above subject I left my hotel at 6.45 A. M. in company with N. Y. Op. M 20.

We held the subject under constant surveillance until midnight at which time we returned to the hotel and disc. at 12.40 past midnight.

A car was engaged for the operation.

Time (1 ½.)
Expense $20.30."

Thereupon the witness continued as follows:

I met Clark in my apartment. Robbins was in the apartment but whether he was in the room or not I do not know. Nobody else was there. O'Reilly was not there the first time so far as my memory goes, I think it was the second time that Clark came with Day that O'Reilly came into the room. I introduced them. I went over the reports with Day. Clark was sitting there at the time. I did not ask Clark what he thought about them. I do not remember asking him if the operatives had followed instructions. I do not think it would be necessary for me or proper for me to ask him that question.

I always delivered the reports personally to Day, and on one occasion they were sent through Clark to Day. Clark was present on two other occasions when I delivered the records to Day. On those occasions I read the reports and went over them with Day. Clark was present. I always discussed the reports with Day when I delivered them to him personally. Day complained as to the time it was taking me to get the reports. Nobody else complained. The first day that Clark was in my presence with Day, Day made the complaint in the presence of Clark.

336 I instructed the operative to place Lamb under surveillance. Day requested me to do so.

They said they wanted to get the reports considerably quicker than they were being rendered to them. The understanding was that they were to receive the reports each day for the previous day's work. We were not getting the reports out very quickly. Day would call me up and ask me to have the reports ready by a certain time, and they were not ready on several occasions. The day he came in with Clark they were not all completed. I pointed out to both Day and Clark that the men were working from six, six-thirty, and seven o'clock in the morning, and continuing throughout the day until twelve or one o'clock at night, and it was not possible for us to get reports from the men as quickly as should be, and, therefore, suggested that the surveillance of the jurors be begun when court recessed for luncheon, which gave us an opportunity of picking the reports up and having them ready at a reasonable hour and let the men get sufficient rest. I do not remember the exact

date of this meeting. It must have been somewhere around the Friday or Saturday of the first week of the trial. The reports were not all completed for the previous day, and that is what led to the discussion of the getting the reports quicker. Day and I generally discussed the completed reports. Clark might have entered the conversation now and again. Day didn't tell me who Clark was, and I didn't know until after the dismissal of the jury. On this occasion Day acquiesced in my suggestion that the operations start at the lunch recess instead of the first thing in the morning. I pursued that policy immediately after that, and shadowed none of the jurors before the lunch recess, if I remember correctly. I cannot remember what Day said about the reports. There was a discussion every day
337 regarding the reports of the previous day. I cannot remember anything that Day said about the reports because I cannot definitely fix the day that I met Clark for the first time. Nor can I remember what juror they were discussing on any of the occasions when Clark was present.

When Day and I went over the reports, all the jurors we had under surveillance on the previous day were discussed. I discussed all of the reports with Day. In discussing the reports regarding Juror Kern, Day, taking into consideration the information regarding Kern in Exhibit 1, requested that we find out just who his brother was and place him under surveillance. We attempted to do this. I have already testified that Day spoke about wanting to find out the responsibility or the irresponsibility of Kern. That was about the 26th of October. I think that it was before that that Day wanted the brother placed under surveillance. He did not describe the brother to me. We had to pick him up ourselves. We had no description of him. Day did not give me any reason for wanting the brother placed under surveillance. The day that Day suggested that I put Kern's brother under surveillance was not the first time that I had discussed Kern with Day, because I have already testified that the report of each operative was discussed each day, and Kern was placed under surveillance on the 19th of October and he was discussed on the 20th of October. On the 19th of October I did not have a conference with Day relative to the reports of that day because the reports were

not rendered until the 20th. We did have a conference on the 20th. At no time did I show Day the original handwritten reports. The reports that I discussed with him were the typewritten reports.

Thereupon the witness was handed Government's Exhibit 30, the report of O'Neill for October 19 concerning Kern.

338 Thereupon the witness continued as follows: If I remember correctly, the only remark that Day made concerning this report was that our man quit before he should have.

Thereupon the witness was handed Government's Exhibit 31, the report of O'Neill for October 20 concerning Kern.

Thereupon the witness continued as follows: I have no recollection of any particular discussion by Day regarding Kern after this report was rendered. There was a general discussion regarding all the reports, but I do not remember anything that he said regarding Kern when we were discussing this report.

Thereupon the witness was handed Government's Exhibit 32, the report of O'Neill for October 21 concerning Kern.

Thereupon the witness continued as follows: I have no recollection of anything particular Day said to me about Kern or the day when we were discussing this report. On this day several of the men missed picking up their subjects, due to the fact that the court recessed before lunch and did not sit again that afternoon.

Thereupon the witness was handed Government's Exhibit 44, the report of Merritt for October 22 concerning Kern.

Thereupon the witness continued as follows: Day requested that we find out who was the owner of the car, license No. N-5259, mentioned in the report. I did find out and I reported it to him. That is all he asked me to do relative to the owner of that car. Nothing further was done and no further instructions were given. The report relating to the owner of the car is in evidence. I gave it

to Day, but whether there was any particular discussion on that day I do not remember. I do not think there was.

It was just handed to Day with other reports. There
339 was no need of discussing it. Day himself read the reports. I did not read them to him. He did not read them aloud. I had copies while he was reading the originals. When he finished reading them there would be a general discussion regarding them.

Thereupon the witness was handed Government's Exhibits 42 and 43, the report of Merritt for October 22nd, concerning Kern.

Thereupon the witness continued as follows:

Having seen the report of the 22nd of Merritt, it is evident that it was on October 21 that Day requested the placing of Kern's brother under surveillance, and not the 26th. I do not remember anything that was said about Kern when we discussed the report of October 22, Government Exhibit 42. In that report the subject drove up in a Hudson sedan bearing license G 2462. In a previous report that car was mentioned and we found that it belonged to Kern. In this report appears the license G-7877. We were trying to get a designation on the brother that day, and a man in that car was thought to be the brother, but we later found we were wrong. We did not find out who that man was, and we did not look it up any further. That number must have been taken somewhere where the men were trying to get the designation on Kern's brother. Another license S-9859 is mentioned. That car was not followed as they could not get another car to follow it in. I do not remember whether it was locked up afterwards. On the 22nd Merritt was on Kern himself, and there were two other men trying to get the designation on Kern's brother. That was at my direction. The number of men used was left to my discretion. Dwyer and Steer were the two men trying to locate Kern's brother. I do not remember Day giving me any reason for having Kern's brother looked up. To the best of my recollection he said nothing about it.

Thereupon the following occurred:

Q. Have you told the court all that you can re-
340 member what Mr. Day said to you about Kern or the surveillance of Kern?

Mr. Crim: I object to that question at this stage of the investigation and in the exploration of these facts.

The Court: He is endeavoring to develop what seems to be the facts. The stage has been reached where he can do that, so far as the witness is concerned. The objection is overruled.

A. I think I have.

Q. And have you told all that you can remember that Mr. Day said to you relative to Kern's brother? A. Yes, I think I have. I cannot recall anything else that Mr. Day said at this moment.

Q. And what you and your agents working under you did relative to the surveillance of Kern and his brother, was done at the direction of Mr. Day.

A. That is right.

Mr. Crim: I move to strike that answer out. It is undertaking to sum up a lot of questions and answers that we have had heretofore. It is too general.

The Court: I do not think that that objection is good on the ground stated. Overruled.

Thereupon the witness continued as follows:

I did not have any discussions or talks with Day that involved matters relative to the surveillance here that were not covered in the reports. Everything that was brought to Day's knowledge was included in the reports.

Since the making of these reports to Day I have not discussed these proceedings with Mr. Day or Mr. Clark and have not talked to them at all. I have discussed these reports with both Sherman Burns and William J. Burns.

Thereupon an objection was made to this line of
341 questioning as being immaterial.

Thereupon the witness continued as follows:

Those conversations have been continual ever since William J. Burns and Sherman Burns have been injected into the proceeding. I do not know whether the reports have entered into every day's conversation, but they have considerably. That was natural because the reports have been published in the newspapers and commented on by newspaper men. We have discussed that several times. The reports of the operatives were sent to Sherman Burns. William J. Burns had nothing to do with the operation. I have discussed that with William J. Burns since he has been cited for contempt of court, and after he was summoned as a witness before the grand jury. I discussed with him all that was in the reports that Mr. Gordon has copies of, and that is all that was done. Everything that the agents did is in the reports. I think that all of the agents followed instructions.

Thereupon the witness testified as follows under the cross-examination of Mr. Douglas:

I am forty eight years of age, and I was born in England. During the time I was in the military service in England I was detached from my artillery brigade for several months during the Boer War for work under the Intelligence Division in South Africa. I also served under the Intelligence Division in India for a few months. I served in South Africa from 1898 to 1902. Then I was out in the Indian Ocean on the general staff for two years, and then five years in India. While connected with the Intelligence Bureau I did secret service work. I came to the United States in 1909. I have been in investigation work the last seven years. Before that I was a salesman in the advertising business. I have been with no other Detective
342 Agency except the Burns Agency. I have been with them between four and five years. I have been in charge of the Philadelphia office since last May, and two years ago I was in charge of it for a few months. I have been in charge at various times of the Chicago office, the Pittsburgh office, twice in the Philadelphia office, and the Miami office.

I was designated by Sherman Burns to take charge of this operation in Washington. To my knowledge William J. Burns has had no active connection with the Agency in the last two or three years. I have known him to sit in an advisory capacity on special cases. I do not know whether or not he was informed of this employment and consulted in any way about it. I did not advise with him about any phase of this particular work while it was in operation. I had no talk with him on the subject one way or the other until after the grand jury investigation started. I did not even know the whereabouts of W. J. Burns up to that time. I did not exchange words with him on the subject in the remotest fashion at any time before the warrant and the seizure of the records at the Wardman Park Hotel, nor until the Saturday following the Monday on which the raid was made.

Other than to transmit $500 three times over here, Veitsch had absolutely no other connection with the case, except to furnish at my request and under the instructions of Sherman Burns two operatives to work under my direction. The money transmitted by him was not his money and was not the money of the Agency at Baltimore, but was money of the Agency which was sent from New York. He is charged up for this money as an advancement to this operation here and repaid his office in Baltimore. The money was charged to me personally. It was advanced by the New York office through the Baltimore office. Veitsch acted just as a messenger, when I so requested. I
343 never consulted nor advised with him about any such step that was taken by me or the operatives during the period of its activities. It was not his business. He would bring the money over and go back again shortly afterwards.

Sherman Burns told me to report to Day on the night of the 18th, which I did. The same night or early on the morning of the 19th I proceeded to Baltimore and called Sherman Burns on long distance telephone and told him what my instructions from Day had been, and he told me at that time to be careful, that the men should not approach or talk to any of the jurors, and that he had so instructed the men that had already been detailed from the New York office, and that any men disobeying these instructions were

to be returned to the respective offices from whence they reported. That was the conversation after I had seen Day. I told Sherman Burns that Day requested the jurors be placed under surveillance, that this was purely a surveillance case.

I gave the operatives, including O'Reilly, the same instructions that Mr. Burns had given me, that under no circumstances were they to approach a juror, that they were not to speak to the jurors, and in every way possible not to permit the jurors to know that they were being shadowed. I said nothing about how close they should get to the jury physically. How close or how far they get all depends on the exigency of the time. If they are in a crowd they have to be pretty close. If there are not many people around they can take a half a block or sometimes a block. If it is an automobile surveillance the same situation exists. In traffic they have got to go close. I told the operatives that they should not speak to the members of the jury, and I told them they would be dismissed from
344 the service of the Agency if they did speak to them.

I did have one or more meetings with the operatives from the operation. The warning as to caution about coming in any contact with the jurors was either repeated by myself or by O'Reilly every day.

Thereupon the following occurred:

Q. If anyone, if Mr. Day, for instance, or Mr. Clark, had asked you while this work was in progress, or at the commencement of it, or before it ended, to establish a contact with anyone of the twelve jurors in the Sinclair-Fall case, would you have done it?

Mr. Gordon: One moment. I object to that, if the Court please?

Mr. Douglass: That is the very essence of the case.

Mr. Gordon: It is not a question of what he might have done if he had been asked to do it.

Mr. Douglass: I don't say might have done. What he would have done.

The Court: Well, he says he never got any instructions of that kind. We could not engage in any speculative inquiries as to what he might, could, would or should have done if he had been asked; objection sustained.

Mr. Douglass: Exception.

Thereupon the direct examination was resumed, and the following occurred:

Q. On that occasion, October 31st, when you went before the grand jury, did you, in response to this question, by Mr. Burkinshaw, make the following answer, referring to Mr. Clark: 'What did he talk about on the occasion you saw him? Answer: Simply took the reports and
345 read them. I asked him if the men followed instructions good.'

Thereupon Mr. Douglass objected to the question on the ground that it was for the purpose of impeaching the witness. Mr. Crim objected that if it was for the purpose of refreshing his recollection unless he was shown the statement and told when it was made, if at any time, and objected further that the proceedings before the grand jury can not be used to refresh the witness's recollection. They being secret, and it being absolutely improper to use them in a proceeding of this nature. Mr. Hoover also objected. Thereupon the objections were overruled and exceptions duly noted.

Thereupon the witness continued as follows:

I have no recollection of making that statement as related to Clark. I have a recollection of answering the question as it related to Day. It would not be necessary for me to make that statement with reference to Clark. I was taking instructions from Day and not from Clark.

Thereupon the cross-examination by Mr. Douglas was resumed.

The first talk I had with Sherman Burns was when he called me at Philadelphia about 5.10 p. m. on the 18th of October. He instructed me to proceed to Washington and report to Day. He told me that it was a surveillance case and asked how many men I could supply from my office, and that he would send me men from New York. He told me that I should get in touch with him after I had seen Day and got Day's instructions. He said it was purely a surveillance matter, and then amplified that in his second talk, when he stated that he had so instructed the men that had already been sent from the New York office to me here in Washington.

346 The purpose of the meeting in O'Reilly's room at the Mayflower between twelve and one o'clock at night was to have the operators there collectively to emphasize the previous instructions, and to change men off from one juror to another. That was arranged at that meeting. The purpose of that was so that one man would not be constantly on one juror. The chief thing was to make shifts. The operators were not all there at one time. As they completed their operations for the day, they had word to report at O'Reilly's room. The meeting ended the day's work. It took place on the 23rd or 24th of November. That was the only meeting like that that we held. At the meeting I repeated the previous instructions, that they should be very, very careful so far as possible not to permit the jurors to know that they were being shadowed. Those instructions were given to every man on the morning of the 19th, before they started out, and as the others arrived they were given the same instructions, and they were repeatedly told to be careful to follow them. I told them that they would be sent back to their respective offices, and recommended for dismissal by the agency if they violated those instructions.

I know positively that Vietsch had nothing whatever to do with this operation, except to transmit the money as I requested.

I first talked to William J. Burns on Saturday the fifth of November, at the Woodward Hotel, New York City.

I use the term "surveillance" in the sense of shadowing. Surveillance and shadowing mean the same.

Thereupon the witness was cross-examined by Mr. Crim.

There were fifteen operatives, including myself, in Washington on this case. The four that came from Philadel-
347 phia were selected by me. I had nothing to do with the selection of any of the others, except that I told Vietsch what type of men I needed, but he selected the men and sent them to me. I never met them until I met them in Washington. With the exception of five or six I knew all of the men personally before the 18th of October.

I have anywhere from ten to eighteen men under me in the Philadelphia office. Those men are at all times under

the employ of the Burns Agency. We do not employ part time men. In addition I have a number of men that I can call on for certain kinds of cases that are not under regular employment of the Burns Agency. With one exception, the men who came down from Philadelphia had been used on surveillance work and had been with us for a considerable length of time. In my work it takes a variety of qualifications on the part of an operative. In my general work of running the office I have men who are known as shadowmen, men who look up credits and financial investigations, and men who are known as ropers. In my business we use both terms, "shadow" and "surveillance." However, the operatives generally use the term "shadow." The first qualification of a shadow man is to move without being observed. By roping we mean being able to get information by using a pretext. Ropers are men who are qualified to come in contact with the subject. Some of the men down here were able to do general work. I have been handling shadow work for over three years. I do not know how many cases of shadowing I have handled. There are a large number. When an operative is apprehended by the subject in shadowing we call it "getting burned up." In an operation like this I changed the operatives on the jurors to prevent burning. Where one man follows the subject any
348 length of time, there is always the possibility of his getting burned up. I did not have any burning in this case come to my attention. I changed the men off to prevent that. I had very, very few of the total employees of the Burns Agency in this case.

I did not place the numbers on the jury list which is Exhibit 1. They were on there when it was given to me by Day. I do not know who numbered it. On a number of these carbons of the reports sent to Day are certain pencil memoranda. Those that I recall were the names of owners of automobiles where the number was mentioned in that particular report. These pencil memorandas were not on the report sent to Day. I assigned Robbins, my assistant, to make up a list of hotels and assign various men to the various hotels. This first two or three days we were late getting the reports into Day's hands, but after we organized we used to get them to him somewhere around ten or eleven o'clock the next morning. The men did not discontinue until late at

night and they did not write out their reports until the first thing the next morning, although the first few days they wrote them out that same night and we collected them the same day. I did not have a sufficient number of operatives to do this work as I would like to have done it. To the best of my recollection Day always read all of the reports every time I gave them to him. It would take him a very few minutes to read them through, and after he had read them they were discussed. I had never met Day or heard his name before I came to Washington on the 18th of October. At no time during this operation did I shadow or come across the name of Donald King, a newspaper man in Washington. I never heard of him or met him until after the jury was dismissed. Day at no time asked me to shadow J. Ray Akers or Donald King. At no time did I di-
349 rect King to get in contact with any juror because I did not know King.

Thereupon the following occurred:

Q. Mr. Ruddy, in your duties in the Burns Agency you have general instructions, general rules, and general regulations with respect to shadowing?

Thereupon an objection was made on the ground that the above question was outside the direct examination and the exception was sutained. Thereupon an exception was duly noted.

Thereupon there was further cross-examination by Mr. Douglas.

Not a dollar of money was used in this operation other than for the payment of the expenses and pay of men.

Thereupon the following occurred:

Q. If you had had no specific instructions, either from Mr. Sherman Burns or from Mr. Day, but simply told it was a shadowing case or a surveillance caes, what would have been, under the rules and regulations of the Burns Agency, the scope of that work?

Mr. Gordon: I won't make any objection to that.

The Court: I think we are getting into a speculative field, Mr. Douglas, and in spite of the fact that the District At-

torney has made no objection, the Court has. I rule the question out.

Mr. Douglas: We note an exception.

Thereupon the witness continued under re-direct examination as follows:

The meeting at O'Reilly's room in the Mayflower Hotel was not the 23rd or 24th, but the 21st or 22nd. It was either Friday or Saturday of the first week. There
350 was no suggestion that I call the meeting. It was a determination on my part, after I had talked to Day earlier in the day and said that I was going to change some of the men around. I reiterated my instructions that night. Nothing was said or done by any one of the agents that impelled me to reiterate those instructions. Nothing happened that suggested it to me. I was simply taking precautionary measures. At the very beginning of the operation the identification cards of the men were taken from them. It is very very often done in surveillance work, and more for this reason, so that when they are off a job around the hotels they won't be identified by anything on them, or that they might leave in their room. We certainly cannot put a uniform on our men and do shadow work, and we took the precautionary measure to take up the surveillance cards, and we do it constantly. Ordinarily these identification cards are carried in the men's pocketbooks or pockets. We don't designate where they shall carry them. I saw Clark at the Willard Hotel the day that the records were seized in my apartment. It was sometime during the afternoon, and I was not with him five minutes. I had been unsuccessful in locating Day and I asked Clark if he knew where I could get hold of him. I told Clark what had taken place and asked him to get in touch with Day and let Day know that we were discontinuing on the operation due to the seizure of the records by the United States District Attorney's office and that there would be no further reports. I requested Clark to take that information to Day.

Thereupon there was re-cross-examination by Mr. Douglas.

The identification cards of the men do show their pictures and their general descriptions.

351 Thereupon the witness was examined by the Court as follows:

I am not a naturalized citizen of the United States, as I have my first papers only. They were taken out in 1925. Before I entered the British Army I was a clerk. I was pretty young when I entered the army. My birthday is the fourth of June and I am now forty-seven. I enlisted in the British Army as a gunner in the Garrison Heavy Artillery. My first few months of service were in Dover, England, and the north of Ireland. My next assignment was in Capetown, South Africa, a year before the Boer War. I served through the Boer War up to within four months of peace. I was in the army less than six months before I went to South Africa in 1898. The Boer War commenced October 13, 1899. After the war had commenced I went back from the front to Capetown on the Lines of Communication staff. It was over a year before I was given this assignment.

Before I came to Washington under the instruction of Sherman Burns I had been in Washington before. The last time I was here prior to the 18th of October was for half a day in March, 1926. I was here several years before that for a few days, but not while I was with the Agency. Three years ago I attended the United States Chamber of Commerce meeting at the opening of their building when the convention was held of Secretaries. I stayed for a week at the Willard Hotel. Prior to my coming here on this operation I was not familiar with the various hotels in Washington. Of course I knew the names of a few of the outstanding leading hotels. In the matter of housing the operatives in the various hotels, I had no instructions as to what hotels I should house them in. Robbins

352 made up a list while I was in Baltimore. He took several colored hotels among the others and we found it out the next morning. He had no acquaintance with Washington. He just took the classified telephone book. In the choice of hotels in which I housed the various operatives, there were no instances where I was influenced to assign them other than that I was going to scatter them about the city, with this exception.

It was at the advice of one of the assistant managers of the Philadelphia office that I went to Wardman Park. I didn't know where it was or anything about it. When I told Day that I had checked in at Wardman Park and that I was going to check men in the other hotels, he said, "Put the man that will be the contact man, your assistant, between yourself and the men at the other hotels," and that is why I put O'Reilly in the Mayflower. I told Day the following day after O'Reilly arrived here that I placed O'Reilly in the Mayflower. I would have selected the Mayflower without Day's instructions, because I noticed it on my way from uptown. I did not report to Day or to Sherman Burns at what hotels the various operatives had been put up. I don't think I ever notified Sherman Burns at which hotels the men were. I suggested to Daly that I would need at least fourteen or fifteen operatives. It was the intention to put every juror under surveillance. That takes twelve men. Then I needed a contact man, and due to the fact that the reports were needed every day, I needed a stenographer. I went over that detail with Day and told him that I would need that number to start with. As a result of some conversation with Day, on October 24th, the total number of operatives was reduced to five, excluding myself. Robbins was detained. He shadowed for only one day, somewhere around the twentieth or twenty-first.

333 He made a report and it has been read in the record.

When my force was reduced to five, it was quite impossible for me to keep all of the jury under this close surveillance that in the beginning I had been directed by Day to do. I had to confine the operatives to only a few of the jurors. I did not choose which jurors would then be kept under surveillance from that time on, but Day instructed me as to that. That surveillance included others than jurors. The jurors that I continued the surveillance of after October 24th were Messrs. Kern, Glasscock and Kidwell. In addition to those I held Lamb and Burr under surveillance after October 24 for a greater or lesser period of time. We had no surveillance on Mr. Simmons at any time. Simmons was an informant for Sullivan, S-70 in connection with the investigation of Burr. After October 24th the surveillance of juror Glasscock continued up to and includ

ing October 30th. Juror Kidwell was kept under surveillance October 25, 26 and 27. The surveillance of Burr, who was not a juror, was kept up to and including October 30. The surveillance of Burr was due to the fact that on October 19 the report of the supposed Long, L-36, showed that a man driving an automobile bearing a certain license number connected with the juror drove to the Post Office Building and remained with Juror Glasscock for a considerable time. The object of the surveillance of Burr was to see whether or not Burr was coming in contact with that particular juror. After discussing the report of the 19th, Burr's actions looked suspicious, and I discussed them with Day, and we decided to find out who Burr was, and the reports showed that he was somewhat irresponsible and not steady in holding his position. The Manager of each office, when he takes over the office, takes the men that are already there, that have pleased their employer and
354 are satisfactory to remain. But new men are taken on by the Manager subject to the approval of the principals. Long was not of the personnel of the Philadelphia office when I went there in May. Long filed his application to join the force as "Long" on the 30th day of September, 1927. In just two or three days, due to the fact that he had shown on his application that he had had five years' experience in the New Jersey State Troopers, and that his reference when checked was absolutely satisfactory, was employed. When an application is submitted to me for employment, the rules and regulations of the Agency require that certain data must be supplied by the applicant. I then verify that data immediately and before the employment. I would look up to see how correct and truthful the applicant's statements of his antecedents were, and I did this in the case of Long. In three or four days after Long filed his application we took him on Army discharge papers were presented to me, and they helped. We investigated a man by the name supposedly of William V. Long. There is a William V. Long. McMullin was using another man's name and references. We did not discover it until the 12th of November, 1927. Then we found out that two years ago that man had been turned down for employment by our own Agency under the name of McMullin due to the

fact that his references were unsatisfactory. He applied under his true name.

I selected him to come down. I made the selection of the four men from the Philadelphia office directly after I received the call from Sherman Burns on the 18th of October. The other men from Philadelphia besides McMullin were Stewart, Sullivan and Knowles. The last two came down at a later date. Day told me that the number of operatives must be reduced. He did not tell me why he no longer wanted this surveillance maintained as to
355 the whole of the jury. All he said was that it was not considered necessary to hold all the jurors constantly under surveillance. At that time, Day gave me the names of Kern, Glasscock and Kidwell as the three jurors whom he wished to hold under surveillance at that time. He did not at that time instruct me to keep Lamb & Burr under surveillance. We didn't put Lamb under surveillance until after that, I think. The instructions were given, but whether they were at that time or not, I cannot say. Reports were made on Lamb on October 26, 27 and 28. We didn't learn Lamb's identity until the 25th. Those were the only people kept under surveillance after October 24. For such length of time as I did keep Lamb under surveillance after October 24, I did so under Day's instructions. That is true also of Burr. Whatever I did in all of this matter, and whomever I observed, I did so under specific instructions from Day.

Thereupon the witness was examined by Mr. Crim as follows:

Day at no time told me to keep Simmons under surveillance, and Simmons was never under surveillance.

Thereupon **Britton Brown** was called as a witness on behalf of the United States, and being first duly sworn, was examined and testified as follows:

I am engaged in the real estate business with offices in the District of Columbia. I know Henry Mason Day and have known him for several years. I met him and saw him quite often in the city here during the trial of the Fall-Sinclair case in October last. I do not remember the date

of our first meeting. It was during the first week of the trial at Donald Woodward's house at 2118 Leroy Place. I do not remember how many times I saw him during that week. It was perhaps two or three times. Day asked me
356 where he could look up a mortgage on a property, and I offered the services of our office, the Randall Hagner Company. Several days later, Day came to the office and got the information. I saw him in the office after that. I am not sure whether I saw him that day or the next day. I saw him in the office only once. At that time I did not discuss with him the information that was given to him relative to the mortgage. Later he spoke to me about why he was looking up the information. If he did tell me who was the owner of the property I do not remember the name. He did not tell me where it was located. He did not tell me what he wanted it for before the trial was over. At the time he asked about the mortgage, I suggested that he come in the office and we could find out about the property, as to whether or not it had a mortgage on it, but he didn't say anything about what he wanted it for.

Thereupon the witness was cross-examined as follows:

I am connected with Randall H. Hagner & Company as a partner of Mr. Hagner's. It is supposedly one of the largest concerns in Washington. I have known Day for several years simply as a friend and acquaintance. We play golf together and go to the races. My residence is in Washington on 23rd Street. I own it. I am a married man and maintain my domestic establishment at that place. Throughout these years Day has been received there as a guest of mine and my wife. Donald Woodward, whom I mentioned has been a friend of mine for many years. He is president of Woodward & Lothrop, one of the largest commercial houses of its kind in Washington. His residence is 2118 Leroy Place, which is just around the corner from my residence. We have been intimate friends all our lives. We are in the habit of going into one another's houses quite often at all hours. There was nothing unusual
in my visit to Woodward's house when I met Day
357 there. It was in Woodward's house that Day first spoke to me about how to look up a mortgage. It

was one afternoon on the way home when I dropped in there, and it was just an off hand question. I had seen him in Washington frequently before that. He asked me how to find out whether there was a mortgage on a piece of property. I suggested the recording office, and then I said that we would be glad to look it up for him in our office, that we were doing that every day, that we had a man there, Anderson, who would be glad to look it up for him. I told him that I would be glad, if he saw fit, to have him avail himself of the facilities of my office. I do not remember that anybody else, except Donald Woodward, was there in the room at the time. It is a little bit vague as to just whether Donald Woodward was in the room or not. I was out when Day came to my office for that information. He got the information. But I was not there when he got it. I talked to him afterwards about the information. I asked him if he got the information and he said that he had. Later he told me why he wanted the information. He did not at that time tell me what the information was that he had received from my employees. He told me the informations showed that there was a mortgage. I told him that he had better find out what the present mortgage was, that it was a building association mortgage. I told Anderson, our settlement man, to find out the present status of the mortgage. I think he did it, but I do not know. Later that evening Day volunteered the information why he wanted it.

Thereupon **Robert C. Dove** was called as a witness on behalf of the United States, and being first duly sworn, was examined and testified as follows:

358 I am engaged in the real estate business here, associated with Randall H. Hagner & Company. I know Henry Mason Day. I saw him in October during the Fall-Sinclair case, but I have no way of definitely fixing the date. I should say that it was the latter part of the first week or the beginning of the second week. I had just met Day. On the occasion that I have reference to I saw him in our office, at 1321 Connecticut Avenue. Day came in and asked to see Brown. I told him Brown was not in. I asked him if there was anything I could do for him. He said that he would like to look up a piece of property, and

we then went over to the plat book and looked up the property. He told me it was 1315 North Carolina Avenue. I turned to the plat book to find out. He was with me at the time. We got the lot and square number. He did not tell me who the owner of it was at that time. He wanted to know whether there were any encumbrances on the property, and I told him I didn't know, but could find out. I told him he could get it from the recorder's office. So he asked me if I could have that done for him and I told him yes; that we would have Anderson do it. I told him I would have to try to catch him downtown by phone, that he was out of the office. I waited a while to see if I could get Anderson, and then I had to go out, so I gave the memorandum, of the lot and square number of the property, and asked the operator to get the information, or to have Anderson get the information. I got the information later that day. The operator gave me a memorandum of it when I came back. I do not know whether I gave the memorandum back to her or not. I had to leave the office again and Day had not been in, so I gave it back to her and asked her to give it to him, or give him the information when he came in. It showed a first mortgage on the property. I think in the amount of $4,000, although I cannot say exactly.

359 Kern was the name of the owner of the property. The mortgage was held by some building and loan association. I do not remember the name of it. I was not asked to find out who was the holder of the mortgage. Day asked me to find out if there were any encumbrances on the property, and if so, what. He did not ask me to whom the mortgage was secured. He did not ask me who the mortgage was made to. When he came in I told him the amount of the mortgage, by whom it was held, and that he could not be positive whether that was the amount at present, because these mortgages were payable so much a month, or at different periods, as a rule. I showed him who the owner of the property was from the assessment book before I sent for the mortgage information. He then told me he wanted the report later that day. I saw him twice that day.

Thereupon the witness was cross-examined as follows:

I have been with Hagner & Company since last May. Prior to that I was the manager of the Shoreham Hotel, until it got too old to run as a hotel. I was also connected

with the ownership of it. I have known Britton Brown and Donald Woodward all my life, and they have been intimate friends of myself all my life, and still are. I was introduced to and talked with Day just about a week before I saw him at my office. I knew, when he came into the office, that he had, for many years, been an intimate friend of both Donald Woodward and Britton Brown. That knowledge made me a little more anxious to serve him, but I would have done so anyway. He asked me if Brown was in. I told him no and asked him whether there was anything I could do for him. He said he wanted to look up a piece of property. He gave me the address, and we looked it up on the plat book, to get the lot and square number. He did not give me the name of the owner. In fact, I showed it to him from the assessor's book. The plat book is in
3960 the back part of the office. It is perfectly open and not in any secret place. Our conversation was not subdued, but could have been heard by anybody who was near. While at the plat book I simply located the house on the plat, and then got the number of the lot and square, and then referred to the assessment book. I asked Mrs. Rawzer, the telephone operator, to get in touch with Anderson. Her desk is in the front part of the office, near the street. I went up to her to talk with her about Anderson. Day had then gone, because I had to go and get Anderson, and Day left. I told Day before he left, that I would get this information for him if I could locate Anderson downtown, but that sometimes we couldn't get him. Part of the information that I gave Day was that the amount recorded against the property was, as I remember, somewhere in the neighborhood of $4,000. I don't know positively whether that was the amount as of that date. It probably had been paid down, and might have been increased. I assumed that the mortgage had been paid off in part because it had been on for about a year. Most of these building associations pay by the month. Neither one of us before that had said anything about part of it being paid off. I think I volunteered the information. I don't recall whether Day said anything on that subject before. About a half hour after he went out I had to leave the office, and then I gave the memorandum to the telephone operator. I did not talk to Anderson until late that afternoon, when he came back to the office I did

not talk to him about getting the information I conveyed to Day. I got that from the operator. It was in writing. I made a memorandum in my own handwriting, and as I had to leave the office again I gave her the memorandum that I had made, and told her if Day called or came in, to give him that information. That is the last I saw
361 of the memorandum. It was not in that memorandum that I stated that I assumed that the mortgage had been, in part, paid off. That was made orally to Day later that afternoon, when he came in the office. The operator told me that he had called up on the phone, and that she had given him the information. I do not know whether or not he ever got the memorandum. I don't know what became of it after I gave it to Mrs. Rawzee. I don't know whether she gave it back and I tore it up. I am not clear on that. I do not recall anything that Day said to me on the last occasion of his visit to my office that day, when he saw me. All I remember is that I gave him certain information. I do not recall anything that he said. I don't know whether we had any conversation. I think Brown was in at the time, and I think he went back to see him, and I simply volunteered that information, as I remember.

Thereupon the witness was examined by the Court as follows:

There was only one encumbrance on the property we found from the personal records. That was a first trust of $4,000. That is the one I talked about. We distinguish between a first trust and a second trust. In this first investigation as to the encumbrances on the property, we found but one encumbrance. I did not ascertain that there were any others at that time upon that particular property. We have copies of the assessment book in our office. The plat books that we have in our office are supposed to be correct copies of the original plat books on record in the Surveyor's office. If I have the number of the premises I can get the precise block and square and lot. The asses-
sor's book shows the ownership and the amount of
362 assessment on the property. While Day was with me on this occasion in my office I consulted both the plat book and the assessment book, therefore ascertaining the lot and block description of the property, and also in whose name it appeared in the assessment book.

Thereupon **Mrs. Irene Rawzer** was called as a witness on behalf of the United States, and being first duly sworn, was examined and testified as follows:

I am employed by the Randall Hagner Company as telephone operator, and was so employed during the month of October, 1927. I remember some time after the middle of the month, Mr. Dove asking me to convey some information to Anderson over the telephone. As far as I can place the time, it was between the 19th and 26th of October. I know Mr. Day by sight, but I don't know him. I saw him that morning that he was in the office. Mr. Dove asked me to locate Anderson and find out from him some information about a piece of property at 1315 North Carolina Avenue, in the name of Kern. I couldn't get Anderson then. He called back a little later. I gave him this information, and he called me back and gave me the information, and I wrote it on a piece of paper. I told Anderson to find out who held the trust, when it was obtained, and anything else he could find out about it. Anderson said the trust was gotten in 1922, by the Columbia Loan & Building Association, for $4,000. Made a memorandum of that and gave it to Mr. Dove when he came in. He gave it back to me and told me to keep it, because he thought he was going out again. I gave the memorandum that Mr. Dove gave me to Mr. Day, that same day when he came in. I had no conversation with him about it. That is the only time I ever saw Mr. Day. I fix that date sometime between the 19th and 26th. I have never seen Mr. Day at any other time.

363 It was sometime after three o'clock that I gave the memorandum to Mr. Day.

Thereupon the witness was cross-examined as follows:

When Mr. Dove came to me and asked me to get in touch with Anderson, Mr. Day had been in the office just previous to that. I don't know whether he was there just at that minute. I don't know whether he had gone out before Mr. Dove came to me. I didn't see him there at the time. The instructions I gave Anderson were those that I got from Mr. Dove, to find out the encumbrance on this piece of property, and who held the mortgage, and when it was obtained, and anything else he could find out. I don't know whether he particularly wanted to find out whether, if the mortgage

existed, it had been paid off, either in whole or in part. Mr. Dove said to find out who held the mortgage, how much it was for, and when it was obtained, and who held the title. In the course of half an hour after I communicated with Anderson he called back. He was at the title company when he called. I wrote down all that he said. The information was that it was obtained in 1922, for $4,000, and the Columbia Building & Loan Association held the title. I handed that paper to Mr. Dove as he came back to my desk, and he just read it and gave it back to me. I ultimately gave it to Mr. Day, about an hour after Mr. Dove had seen it. Mr. Dove was not in the office when Mr. Day came in. He went back to see Mr. Brown, as I remember. Mr. Brown was in. I gave him the paper as he came in the door. He made no comments on it in my hearing. At no other time did I give Anderson any further instructions on this same subject. No one in the office talked with me about it, nor did Mr. Day.

Thereupon **Paul S. Anderson** was called as a witness, on behalf of the United States, and being first duly sworn, was examined and testified as follows:

364 I am employed by Randall Hagner Company, real estate brokers. I remember receiving a telephone message from Mrs. Rawzee asking me to get a report relative to certain property. I don't remember the exact date. I know it was sometime in October. I do not remember what the property was that I was asked to look up. It came to me by lot and square number. I don't remember whether I was told what street the property was on. I never learned the street. I was at the District Title Company when I got the message, and I went to the records to get this information. I found there was a trust on with the American Building Association for $4,000. That is the one thing I remember. I do not remember when that was made. I should say that it was about two years off; the maker of the trust was named Kern. I don't remember his first name. I called Mrs. Rawzee back on the telephone as soon as I got the information.

Thereupon the witness was cross-examined as follows:

I made no other or further investigation at a later time. Later in the afternoon in the office, Mr. Brown asked me if I could find out the amount due and I called the building association to find out about it. Mr. Day was in the office at the time I called the building association for the amount due. I did not talk to Mr. Day about it. I never had a word of communication with him about it.

Thereupon the witness was further examined as follows:

Mr. Brown asked me to get the information relative to the balance due on the trust. He was in his office and I was sitting at my desk, which is next to his private office, just back of this door, and he called out to me to get the information. Mr. Day was there at the time with him. When I got the information I went in the door and told him. Mr. Day was there at that time.

365 Thereupon the witness was examined by the Court as follows:

I got a telephone call from Mrs. Rawzee, and I consulted the records of the title company.

Thereupon **Donald Woodward** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

My residence is at 2118 Leroy Place. I am president of Woodward & Lothrop. I know Henry Mason Day very well and I have known him for twenty years. So far as I know he is some way connected with the Sinclair interests. He came down to be my house guest during his stay in Washington. Immediately preceding that I had seen him the last time I was in New York. My first information that he was coming to Washington was received from the press. My recollection is that I phoned him immediately. I haven't any idea when that was. I phoned him to ask him if he was coming down and if he would be my guest. I don't recall what he said to me in that telephone conversation. I phoned him the same day, I read it in the press. I haven't any idea as to the date. He came down and was my house guest during the Fall Sinclair case. He had

visitors at my house during his stay there. He on one occasion brought in Mr. Sinclair's brother and Mr. J. J. McGraw. Sheldon Clark was there to dinner on one occasion. I do not remember the date. Mr. Day did not tell me what he was doing in Washington during his stay at my house. He said that the Burns Detective Agency was down here shadowing the jury. I do not recall when he told me that. I would imagine that it was shortly after he came down here. I could not tell how many days thereafter. I saw Day and Harry F. Sinclair in company together during their stay here. It was at the
366 Laurel Race Track, the day Sweepster ran, which was on a Saturday. I remember seeing Clarkson and McCahill on the 31st of October. They eventually served Day and me with a summons. They called at my house and asked for Mr. Day. As I recall I was about half dressed, and I went downstairs and asked them what they wanted with Day. Of course, I got no information from them, and I said that I expected Day shortly, and we sat down and played the victrola, and as I recall I telephoned to two or three people with the idea that we would play a little bridge that evening. Day did not return and I asked one of these gentlemen whether they wanted me to get in touch with Day, and they said, "Do you know where he is?" I said "Yes," and I called Day at the Mayflower Hotel. I cannot remember the room number now. I imagine it was Mr. Sinclair's room, but I do not know. I had previously called Day at that room number. I cannot remember the number of that room. Day gave me the number in the first instance. I do not remember now who answered the telephone from that room number. Clarkson is a deputy marshall and McCahill is a secret service man.

Thereupon **Harry Jeffries** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I reside at 458 Park Avenue, East Orange, New Jersey. I am employed as a clerk by H. F. Sinclair in his personal employ. My office is at 45 Nassau Street, New York City, which is the building known as the Sinclair Oil Building. I called the Burns Agency on the 18th or 19th of October.

I am not entirely sure which day it was. I asked for Mr. Burns and I was connected with Sherman Burns. I supplied to him the address and telephone number of Mason Day in Washington, and I asked him to call Day on the telephone at that number. I gave him an address which
367 I believe was 2118 Leroy Place. I do not remember the telephone number I gave him. Immediately prior to making that call to Sherman Burns, I received a long distance telephone message from Day, who was then in Washington, instructing me to call the Burns Agency, supply them with Day's telephone number in Washington and have them call Day on the telephone.

Thereupon **George H. Robbins, Jr.**, was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I reside at 5820 Ellsworth, Philadelphia. I am Assistant Manager of the Burns Agency, in the Philadelphia office. I have been an employee of the Burns Agency since October, 1925. I came to Washington with Ruddy on the 18th of October on the 6.50 train. When I arrived in Washington I took a cab and went to Wardman Park Hotel. I was instructed to wait there until I heard from Ruddy. I went alone in the cab. I believe Ruddy came back around eleven o'clock that evening. I was told to get a list of hotels ready to assign men to in the morning. That is about all he told me at that time, except he wanted me to accompany him down to the Station. I was asked to make provisions for eight men, who were expected on the morning of the 19th. I don't remember to which hotel I assigned each of these men. I do remember that inasmuch as I was familiar with this city, I made the grave mistake of taking hotels near the station, and I picked several hotels which we never used. They turned out to be colored and Chinese. The reports would not remind me at all, because I don't think they appear on any of the reports. We had a separate list that we compiled afterwards showing the hotels.

Thereupon the witness Government's Exhibit for
368 Identification 155, and the following occurred:

Q. Well, go ahead now and tell the hotels to which you assigned each of these men.

Thereupon Mr. Crim objected to this on the ground that it was not binding on Mr. Day and Mr. Douglas objected on the grounds that it was irrelevant and cumulative evidence.

Thereupon the objections were overruled and the witness continued as follows:

At the Capitol Hotel I assigned O'Neill, at the Plaza Hotel, Brennan, Homrighausen at the Metropolitan. Long and Stewart at the Harrington. Kirby at the Harris. Dwyer at the Commodore, Klein at the National, Merritt at the Washington. I believe he moved later. Ruddy, my manager, ordered me to assign these agents to different and separate hotels. I received that order shortly before midnight on the night of the 18th. I remained in Washington on this operation from the 18th until we were excused from grand jury duty, the 16 of November. My duties here were to type the edited reports. The first three days, Ruddy edited all of the reports, and after that he edited some but he didn't have time, so he left it up to me. Before we began typing the reports even, I believe the second day of the operation, I shadowed one juror, Conrad Herzog. We got here Tuesday night. This was either Thursday or Friday. While in this city I lived with Ruddy. We occupied adjoining rooms at the Wardman Park. While I lived there Ruddy had visitors in those rooms. Day and Clark came there at different times. There was no one else that I know of. I saw Day at least three or four times a week. He usually called for the reports. I would have to have them typed. I saw Clark only twice, to my recollection. The first time I saw him

369 he was alone. It was around noontime on the second floor of the Willard Hotel in Clark's room. At that time I didn't know him as Clark, however, I know now that it was Clark. I was told to take the reports in to the Willard Hotel. I forget the room number right now. I left them there with this gentleman as Day was not able to come in and get them but was to get them later from Clark. I was not in his room on that occasion for over three minutes. I handed him the reports and walked out. I asked him if he was the gentleman I was to give these reports to, and he said yes. He was at that time eating his breakfast in his room. There was no

other conversation on that occasion. The other occasion that I saw Clark was with Day at Wardman Park. After I had been introduced I was invited out by Ruddy. There were just Ruddy, Clark and Day there in the room. I believe I saw Clark on one other occasion, at Wardman Park. He was with Day and he remained fifteen or twenty minutes. He just came in, and they went into Ruddy's apartment and I naturally went into mine. I was introduced to Clark the first time that he came to Wardman Park. Save for one day, October 20th, my duties consisted in typing reports collected by O'Reilly from the different operatives. On October 20 I was assigned to Juror Herzog and covered him.

Thereupon the following occurred:

Q. Now, I notice in your report for that day, Mr. Robbins, that you proceeded to the subject's home and picked him up by his car, and that he went back and forth to his place of business four times from four o'clock to 9:30 P. M.; license of Ford car F-3739. Did you follow him back and forth on those four occasions?

Mr. Crim: Now, I want to make an objection to that, your Honor, on the ground heretofore made, that this in no way came to the attention of Mr. Day. It is
370 hearsay, this testimony, as to Mr. Day. We are objecting to any information or anything that this man did that is not in this report.

The Court: Overruled.

Thereupon the witness continued as follows:

I did follow him back and forth on those four occasions. I had a taxi. I do not remember what time he left his house. I am positive he made four trips. My report says "At 10 P. M. subject and a woman from his home went to 9th & D to Hung Low Chinese restaurant. After eating they returned to their home." I followed the car to the restaurant. It was rather dark to see him coming out. I followed the car. I saw him go into this restaurant on 9th Street. I followed him out and to his home I saw two people leave the car and go into the house.

Thereupon the witness was examined by the Court as follows:

I saw him leave the car, or rather I saw two people leave the car. It was dark and I didn't want to get too close. I followed the car. I am not prepared to say that I identified Herzog as one of the two people leaving the car.

Thereupon the witness was cross-examined by Mr. Brandenburg as follows:

I was instructed by Ruddy over the phone to deliver this envelope addressed to Day to a certain room at the Willard, as Day could not come in to get the reports. I was to give them to this gentleman at this room number. Ruddy told me that Day said he would not be available, and to please hand it to Clark to be delivered to Day. Whatever was in that envelope was sealed. I didn't know what was in it.

Thereupon the witness was cross-examined by Mr. Wright as follows:

371 I was in the service during the war from shortly after the war was declared until August 21, 1919. In my first enlistment I was entitled first-class, 101st Engineers, 28th Division. I was discharged, however, later that year with meningitis. I came home, and enlisted with the 66th Engineers, which was prepared at Laurel, Maryland. I was not in the active field of belligerency due to my discharge and disability. The 66th Engineers were a non-combatant outfit. I am a married man. I own my own home in Philadelphia.

Thereupon the witness was cross-examined by Mr. Brandkinshaw as follows: Ruddy prepared that envelope that I brought down to Clark. It was prepared at Wardman Park, but not in my presence. I gave Ruddy the papers, and then he would handle them as he saw fit. I did not see what went into that envelope. As soon as the reports were finished I always handed them to Ruddy.

Thereupon **Charles G. Ruddy**, a witness heretofore called on behalf of the United States, was recalled for further examination, and being examined by Mr. Burkinshaw further testified as follows:

While this operation was on I sent my assistant, Robbins, to the Willard Hotel to Clark, with an envelope. Reports rendered by the operatives as to the surveillance of jurors in this case were in that envelope.

Thereupon the witness was cross-examined by Mr. Brandenburg as follows:

Those reports were in a sealed envelope. I had heard from Day advising me that he would not be available to have the reports sent to him. He asked me to send them to a certain room at the Willard Hotel, and to leave them at that room for him. That envelope was addressed to Day.

372 Thereupon **Frank M. Dent** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I am a sergeant of the Metropolitan Police and I have been connected with the force for nearly 31 years. I have seen Daniel E. Merritt before. I saw him at 14th and U Streets, Southeast, October 25th, about 11:00 P. M. I also saw him upstairs in the corridor of this building, and shook hands with him, about two weeks ago. On the occasion of our first meeting I was sitting in an automobile at 14th and U Streets.

Thereupon the same objection was made to this testimony as was made to the other.

Thereupon the witness continued as follows:

It was about 11:00 o'clock on October 25. A gentleman in an automobile drove up and pointed to a gentleman walking down the street, and drove away. This other gentleman, who was Merritt, walked over to my automobile. A conversation ensued and he shook hands and walked away. Observing that he did not go directly to the street cars by the route that a stranger naturally would take, I ran around the block, put my lights out and followed him nearly to the corner. When we got in sight of the corner where the cars stopped on Nichols Avenue, Sergeant Swayne was standing on the corner, and I waited until Merritt got on the street car, and the car pulled away, and then I drove over and talked to Sergeant Swayne.

Thereupon the witness was cross examined by Mr. Hoover as follows:

I was standing at Fourteenth and U, Southeast, at the time my attention was attracted. That is about two blocks east of Nichols Avenue, the street on which the car
373 line operates. Some person came up there and said something to me. That is what attracted my attention and caused me to have the talk with Merritt. Merritt walked over to me. This gentleman pointed him out first, and he came over to my car. I have no idea who the man was who first spoke to me, or where he lived.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

This man was driving an automobile when I saw him. I did not notice what house he came out of. I did not notice the automobile license number.

Thereupon a motion was made to strike out all of the above testimony on the ground that it was irrelevant to anything that was at issue in the case, and the ruling was reserved on the motion and later overruled and an exception duly noted.

Thereupon **Frank J. O'Reilly** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I am now employed by the Burns Agency and have been so employed for seventeen months. As an employee of the Burns Agency I came to Washington on October 19, 1927, at the direction of Sherman Burns, who told me to proceed to Washington on the night of October 19th and meet Ruddy at the Union Station upon my arrival. He told me to take further instructions from Ruddy. Everything that I did in Washington was done under the direction of Ruddy. I reported everything I did to Ruddy. I commenced work on the night of October 19th. Ruddy told me on October 19th that I was to be his assistant manager while in Washington and that I was to be a contact between himself and the operatives employed on the work of

surveillance. I did not do anything on October 19th. I engaged a room at the Mayflower Hotel on the morn-
374 ing of October 20th about twenty minutes of one. I went there at the suggestion of Ruddy. I asked him if he had any idea where I could engage a room and asked him to give me an idea as to the hotels and he said to stop at the Mayflower. I finally checked out of the Mayflower at 3:00 o'clock on the afternoon of October 26th. In the interval I was staying continually at the Mayflower in room 401. On the 20th of October all that I did was to register at the Mayflower. After I registered I talked with Ruddy between twelve and one o'clock the following morning with reference to further instructions. He told me I was to visit the various operatives employed on the work of surveillance and take from them their reports each morning. He gave me the names of the operatives and told me where they were located. He told me to bring the reports to him at Wardman Park after I obtained them from the operatives. I commenced doing that the following morning, October 20th. I started to work that day about eight-thirty. Up to this time I had never met Day personally nor met Clark personally. I had not met any of the respondents save only Sherman Burns. That morning of the 20th I visited the hotels where were certain men, I do not know how many, and received from them the reports as to their activities of the previous day. I received a report from every man that was engaged on that day or the day previous, and took them to Ruddy at Wardman Park. I did not go over or discuss the reports with Ruddy. I handed the physical handwritten reports to him. I also that day accompanied assistant manager Robbins to this court house. I am not sure, but I believe that day he placed one of the jurors under surveillance. He obtained a designation on the juror at the direction of Ruddy. All I did at the court house was to accompany Robbins there. I left him outside on the steps.

It was about 11:00 A. M. I came down here with
375 Robbins at the direction of Ruddy, who told me simply to accompany Robbins down to the court house and after I left Robbins to call him for any further instructions the he might give me. I did call him and he told me to return to Wardman Park. I did that. It was about one o'clock in the afternoon. When I went to Ward-

man Park I saw Ruddy alone. I first saw Day at Ruddy's room at Wardman Park on the 24th, Monday. When I saw Ruddy on the 20 he told me to stand by for further instructions. I remained at Wardman Park until about 9:00 P. M., I think. During that time I do not believe I received any further instructions. I did not do anything and I did not leave the room. No one came in while I was there. When I left Wardman Park I returned to the Mayflower. I asked Ruddy if there were any further instructions and he said, "No, return to your room at the Mayflower, and if I want you I will call you." When I returned I had no instructions to do anything. I remained in my room until one o'clock, at which time I retired. I think I received a call the following morning from Ruddy around 7:30 or 8:00 o'clock. I do not remember what my phone number was. I was in room 401. Ruddy told me to wait, as he was coming town to the hotel. He came down alone about 8:30 or 8:45. My recollection is that Ruddy handed me a list of automobile license plate numbers and asked me to proceed to the Bureau of Automobile Registration and find out who the owners of all those plate numbers were. He told me when I had that list completed to return to the Wardman Park Hotel to him. He then left me. That is all that transpired between us on that occasion. I then proceeded to the District Building where I obtained these various names and addresses. I brought that list back to Wardman Park and my recollection is that I handed it to Robbins.

376 It was about 2:00 or 2:30 when I got to Wardman Park. I think it was then for the first time that I saw Robbins at Wardman Park. Ruddy told me why he wanted me to get information with reference to these license numbers. He told me that these numbers had been reported by various operators in their activities of the previous day, and they had shown either where certain jurors were under surveillance had entered these cars, or that these cars had been seen or were reported as having trailed the car in which the jurors were riding. When I returned the list to Robbins he was the assistant manager. I made no oral report to him. I said nothing to him except that this was the information that I obtained at the District Building. My recollection is that that is the night, the 21st, that

operative Steer arrived from New York and came to Wardman Park and I interviewed him. Ruddy and Robbins were present at the time. I told Steer to engage a room at the Pennsylvania Hotel, and he would receive further instructions the following morning from me or Ruddy. Ruddy said nothing. That is all that transpired. Steer left and I remained in the room perhaps an hour. In that hour there was general conversation between Ruddy, Robbins and myself. That conversation dealt with the activities of the Burns' men, as to how the men were engaged and to what men they were holding under surveillance. Ruddy asked me regarding the reports I had collected that morning and asked me when I had collected them and where I collected them from. Robbins asked me if that was a completed list of the owners of the plate numbers which I had obtained, and asked if the automobile had checked as against the reports. There came a time when I went to the barber shop of a man by the name of Kidwell. And there came a time when I went to a house on U Street, Southeast, occu-
377 pied by a family by the name of Kidwell. There was nothing said in that conversation that night of October 21st about those things. About four o'clock in the afternoon of this day operative Knowles phoned Robbins at Wardman Park and told him that he had lost his subject in traffic and that he was about a block away from the Municipal Building and wanted to know what to do. I told him that he would either have to go to the subject's home or decide for himself. He did not say who the subject was and I did not later ascertain who it was. That night I returned to the hotel and waited for instructions from Ruddy. My recollection is that I did not hear from him again that night. I don't think I heard from any of the other operatives that day or night other than those I have mentioned. On October 22nd I got up at 7:30 or 8:00 o'clock at the Mayflower. I called Ruddy and I think he told me to come up to Wardman Park. He did not tell me why. I got there at 9:00 or 9:30. Robbins and Ruddy were present. I think that Robbins handed me a list of one or two numbers that he had omitted giving me the day before in regard to owners of these automobile license plates referred to. He asked me to find out the owners of these two numbers. That is all that happened while I was there. I was there about 10 or 15 min-

nutes.. I left Wardman Park about 9:45 and visited the various hotels where the operatives were living and obtained for them their reports of the 21st, the day previous. I returned first with these reports to Wardman Park. I then went to the District Building about 1:30. I did not talk to any of the operatives with reference to their reports or their activities. When I returned the reports at Wardman Park, Ruddy and Robbins were present. Ruddy told me to wait for any further instructions that he gave me. That is all that was said by anyone present. I did so wait and I remained there until about ten-thirty or 11:00 P. M.

378 Up to this time I had received no instructions about a barber named Kidwell or a family on U Street, S. E. named Kidwell.

Thereupon Mr. Hoover objected to this line of questioning as improper and objectionable.

To the best of my recollection I have told all that transpired at the hotel on that occasion. From the hotel I accompanied Robbins and Ruddy to my room in the Mayflower Hotel. Around midnight I communicated with the various operatives by telephone and told them to come to my room at the Mayflower the same night, October 22nd. Ruddy directed me to call them on the phone. He said that he was going to make assignments, or to switch certain men from one juror to another. He did not tell me why he was going to switch them. He said nothing about any of them being "turned up." He never used the expression. That is all he said about the jurors, and to the best of my recollection that is all he said on that occasion. No juror's name was mentioned on that occasion. At various times between 12:00 and 1:30 the following morning every operative engaged on the work, with the exception of Homrighausen, came to my room. There were present Steward, Dwyer, Knowles, Robbins, Ruddy, Klein, Steer, Brennan, O'Neill, Kirby, Sullivan, Long, alias McMullin, and myself. There was no time when they were all there at one and the same time. This man Long, alias McMullin, arrived perhaps 20 or 25 minutes after some of the men had gone. He was then in company with Stewart. I don't know how many men had left. I know at least one or two had. When

the men came in Ruddy talked to them both singly and in groups. I think he had something to say to some individually and generally to most every man. Robbins was there at the time. I didn't hear half of what Ruddy said. He reassigned two, possibly three, of the men from the
379 juror they had under surveillance to other jurors. My knowledge is that there was a change made with O'Neill and Merritt. I don't know from what juror to what juror. I don't know the jurors that they were holding under surveillance. I heard Ruddy make no explanation to either O'Neill or Merritt as to why this change in designation was made. I didn't hear any conversation that Ruddy had with these men. I heard him discussing the changes. As to the individuals outside of O'Neill and Merritt there was nothing that I recall as to the conversation. I spoke to operative Sullivan. He had told me that he had changed his room and was living at the Raleigh Hotel. He asked me if it was alright, and I said absolutely all right. There was nothing else.

Thereupon the following occurred:

Mr. Brandenburg: I understand, your Honor, that all of this line of examination goes in under the exception and the reservation your Honor has just made.

The Court: Yes.

Thereupon the witness continued as follows:

At the time of this conference I still occupied the position as contact man between Ruddy and the operatives. It was generally understood that in every case Ruddy gave instructions directly himself. He did not tell me what instructions he gave to these men. On my arrival on the night of October 19th I first learned the instructions from Ruddy to the operatives. I did not tell the Court what those instructions were because I was not asked. I accompanied Merritt from New York, and upon arrival Ruddy gave the instructions to engage a room at a local hotel. He told Merritt his call here was for the purpose of shadowing a man that would be designated to him. I don't recall

whether he was told at the time the name of the man whom he was going to shadow. I did not, later on, learn
380 from Ruddy or Merritt the name of the man that he was designated to shadow. I do not know today. I believe I have told all about that conversation. Instructions were given both by Ruddy and myself to Steer, when he arrived on the night of the 21st. The instructions were that he was to shadow a juror for the purpose of reporting this man's movements, to keep him under surveillance, not to approach him, hold conversation with him, but to report his active movements during the day and night. That was at Wardman Park. Ruddy selected the juror to whom Steer was designated. I do not know, even now, who that juror was. I did not make a report of my activities at the time I came, up to and including October 22. On October 19, I made a report as to my arrival here. That was my only activity, and I did nothing. On October 20 I made a report which truthfully set forth my activities. That report was in my own handwriting. I made two reports of my activities on the 21st. Those two reports contain a true statement of my activities. I never reported about the conference. There was nobody to report it to. I have no knowledge of any activities that were not reported. I believe everything was reported, aside from the matter of this conference. On October 23rd I went to Wardman Park about 9.30 in the morning. Robbins gave me a list of possibly two or three names that I in turn had furnished him the day before after my visit to the automobile Registration Bureau. Ruddy asked me to visit operatives Steer and Brennan, who, I believe, were at the Plaza Hotel. I went there and assigned Steer to find out who some people by the name of Vogts were. They owned an automobile which had been reported in a previous operative's report. I assigned Steer to find out who this man who owned the automobile was. I did this at the direction of Ruddy.
381 He did not tell me why. Up to this time I had not read any of the other operative's reports. I did not give Brennan his instructions. Steer left the room to proceed on this investigation and Brennan remained there. I called Ruddy at Wardman Park and he instructed me to find out if operative Dwyer had succeeded in obtaining a designation on a man named Kern, who was the brother of

the juror. That is all he said. He did not give me any description. I had not heard of any previous instructions given by Ruddy to Dwyer. I met Dwyer about 4 p. m. He was with Merritt, and I found them a block away from North Carolina Avenue. I now know that Kern, the juror, lives at 1315 North Carolina Avenue. These men were about a block away from there. I asked Dwyer if he had succeeded in getting a designation on the brother of Juror Kern, and he said he had not. This conversation lasted over a period of perhaps two minutes, and I returned to Wardman Park. I don't remember in detail all that was said. I found what I wanted to know. Nothing else was said on the subject of Juror Kern, or Juror Kern's brother by me or by Dwyer. Merritt was at a distance of perhaps ten or fifteen feet. Neither one of them said why they were in that neighborhood. They said that Juror Kern lived about a block away. I didn't tell that to the Court a while ago because I thought it was immaterial. The fact that they were in the neighborhood showed that as good shadow men they should have been in the neighborhood of Kern's home. Nothing else was said on that occasion, I am positive. I was satisfied Dwyer had not obtained his designation. That was what Ruddy wanted to know. What the general conversation was I have no recollection of whatsoever. To the best of my recollection I have told the Court all that was said by any of the three persons on that occasion. Ruddy told me that they were over near the
382 home of Juror Kern. He said that Merritt had this juror under surveillance. There was a man who lived in the neighborhood of North Carolina and some other street. I don't know whether at that time he gave me the address. I proceeded to that point and I had little difficulty in finding Merritt or Dwyer. I left that point and went to Wardman Park and reported to Ruddy in Robbins' presence. I reported that I had assigned Steer from the Plaza Hotel to investigate this party known as Vogts. That after leaving him I had proceeded to the neighborhood of North Carolina and this other intersection and had found Merritt and Dwyer; and that I had interviewed Dwyer and that he had reported his failure up to that moment to obtain a designation upon the man he was assigned to shadow. I have told everything that transpired at Wardman Park.

I got there about 6:30 and returned to the Mayflower about 7:00 o'clock. I did not do anything in the meantime. I think I wrote out in longhand a report as of that day, the 23rd. I wrote into that report a truthful report of what had occurred. I returned to the Mayflower and had dinner. I started the report at Wardman and finished it at the Mayflower. There was no reason why I did not complete it at Wardman except that I was hungry and wanted to get dinner. I gave every report that I wrote out to Robbins or Ruddy. Ruddy directed me to write out the reports. He simply told me to write a report stating that I had performed the duties assigned to me over a period of certain hours, acting as his assistant manager. As to special investigation work, I reported in detail. This occurrence here in Washington on which I was engaged was rather special investigation work. By "rather" I mean rather special. I have reported all of my activities on October 23rd.

383 On October 24th I commenced work at 8:00 o'clock in the morning. I was met at my room by McMullin, alias Long. I first saw this man after he came down here on this operation on the morning of the 20th, about 12:30 A. M. I saw him every day, and got reports from him daily. I also gave him instructions. About 1:45 on the morning of the 23rd he reported to me his activities of the previous day. He told me he had obtained the license number of a certain Oakland Roadster which he had observed in his activities on the day before, and which car he had followed out to the Potomac Flying Field, and that the driver of the car had engaged the juror he then had under surveillance in conversation for a period of from 20 to 25 minutes. He furnished me with the license number of this Oakland Roadster and asked me at the time what the possibilities were of learning the owner of that automobile. I told him that could not be done at that hour in the morning. He then suggested that I take advantage of the all-night telephone connection that the Police Department use in obtaining such information as a result of accidents, hold-ups and other various things. I said there was no necessity of that, that we would do that Monday morning. He said, "I will come to your room at eight o'clock Monday morning and we will go together to the District Building and

find out who this individual is." That arrangement was made, and I made out the report I testified about this morning. I just recalled this incident when I was asked about my movements Monday morning. At various times other agents had reported orally to me things that they considered of importance. Homrighausen, H-4, made an oral report when I received his written report the 20th or 21st, or both. I did not read the report. He reported verbally that he had observed one or two individuals in the neighborhood around the block of the business address of
384 the man that he was shadowing. I asked him if he had put it in his report and he said that he had and that he had also given a description of the two men. I did not know then and I do not know now what was in his report, but my recollection is he said he had seen one or both of these individuals around this subject before. I asked him if he had put that in his report and he said he had. And in the report I gave Ruddy I reported orally to Ruddy my verbal conversation with Homrighausen. To the best of my recollection I have told all that that operative told me. He described the two men that he observed what he considered shadowing the subject. He said he observed these men in the neighborhood of his subject's place of business and his recollection was he had seen them previously that morning. He was positive he had seen them the night before, but he did not know whether it was in the neighborhood of his subject's house. He did not know the two men. He furnished me verbally with a general description of the men he observed, but I have no recollection of what that description was. It was as to the height and clothing, but I cannot tell the details. I did not give that description to Ruddy. I reported to him the fact that two men had been seen in the neighborhood of the juror's home, presumably holding it under surveillance, and that Homrighausen had put that in his report, but that I had not read it and did not know what was in it. When I use the term "subject" I refer to the subject of the man in our employ. I know in each report the subject is the juror being held under surveillance, but I haven't the slightest idea, then or now, which particular juror it was. There were also other oral reports. If a man had occasion to men-

tion license numbers, when handing me his report he would
sometimes give me a little slip bearing the license
385 numbers obtained by him from what he would call
contact automobiles, automobiles seen either in the neighborhood of the subject's home, following him, or any automobiles that jurors had ridden in. In most cases that was handed to me separately, making it easier for me to get the list, rather than to have Robbins go through the reports and pick them out. They discussed verbally how they obtained the license numbers—nothing in detail but simply the fact that that license number was obtained, and they handed it to me to make a notation from what they told me, or for me to get it from Robbins as he took it from the reports when he typed them. And then on the 23rd, at about 11:30 P. M. my recollection is that McMullin, alias Long, came to my room at the Mayflower and reported his subject having gone out to the country that afternoon or evening, some 20 or 25 miles out, and he mentioned the name of the place. He said that the man had visited there perhaps an hour or an hour and a half, and had then come back. He also said that this was the man that he had out to the air field the day before. And he said, "Were you able to find out who was the owner of that automobile?" And I said, "I have not, but we will know tomorrow morning." He asked me if he could be of assistance to me and I said that he could not. He said, "I would like to join you and I will go down with you. You could meet me around 8:00 or 8:30 and we can drive down in my car and get you down there and you will be done in five minutes." And I said, "Fine, I will meet you tomorrow morning at 8:00 or 8:15 in the lobby of the hotel." I think that covers that particular verbal conversation. Later on the same night, the 23rd, I received a communication by telephone from Kirby, K-1, regarding his inability to remain in the neighborhood where his subject was living, and to do so unobserved. At the
time I think he told me that he had engaged a room
386 across the street in a rooming house and asked my
approval. My recollection is I approved it, or else called Ruddy for approval. Kirby said he believed his movements were being observed by a policeman and other

individuals in the neighborhood, and he didn't want his position of surveillance to be taken up, and decided it would not be wise. In fact he had been approached by one or two in the neighborhood and ordered away. He said to remain there, he had taken a room across the street from where his subject lived. I did not and do not know who the subject was. Up to the 24th nothing was said to me, or any of the other operatives, about the Kidwell family.

On the 25th I met Ruddy. It was a common arrangement that I would go to Wardman Park in the morning with reports that I had collected. I may have phoned him. If I did, he told me to come over. He told me that certain of the men were being returned to New York. Robbins was there. He accompanied me as we left Wardman Park, and we visited four or five hotels, and Ruddy gave instructions to the men we visited to return to their respective offices. He did not tell me why they were returning. Day was not mentioned. He instructed Dwyer, Brennan, Klein, Stewart, Knowles, Kirby and O'Neill to go. That left in Washington, besides myself, Ruddy, Robbins, Steer, Merritt and McMullin, alias Long. That consumed about three-quarters of the day, until about 3:00 or 3:30. Sullivan did not receive these instructions at the time the other men did, because he was actively engaged at the time, but I subsequently reached him at his hotel and instructed him to come to my room at the Mayflower, where I gave him instructions to return to Philadelphia. I met him there about 4:30. That evening about 9:00 or 10:00 I endeavored to obtain a designation on H. R. Lamb, which information was
387 brought through the report of Steer. I endeavored to see the man for the purpose of shadowing him, and I was unsuccessful. This information was brought to Ruddy in a written report by Steer, that Lamb was the record owner of the Oakland roadster, as shown in the Long report of the 22nd, showing this contact on the air field. I think P-1378 was the license number. I have told all that transpired on the 25th of October.

Thereupon Mrs. Mary Pearl Kidwell stepped into the court room to be identified by the witness, and having faced the witness, she stepped out again.

Thereupon the witness continued as follows:

I would not state positively that I have seen that woman before. I think I may have seen her about 4:30 or 5:00 on October 24th at a house on U Street, in Anacostia. I think the number was 1637. My recollection is that there is a small porch in front of that house. I do not remember whether or not I had a top coat with me.

Thereupon Mr. Edward J. Kidwell, Sr., stepped into the court room to be identified by the witness, and having faced the witness, stepped out again.

Thereupon the witness continued as follows:

I recognize the gentleman who just came in. I saw him on October 24th about 5:00 P. M. at a barber shop in Congress Heights. It was 10 or 15 minutes after I had seen a lady in a house on U Street, Southeast.

On October 24th at about 8:30 McMulling, or Long came to the Mayflower as previously arranged to accompany me to the Automobile Registration Bureau in the District Building. We left the hotel about 9:00 o'clock and went near the Plaza Hotel where we met Brennan and Steer,
388 who joined us, and we all went to the District Building, where I looked up the owners of automobile license numbers. I assigned Steer to look up the owner of automobile bearing license P-1738, and I instructed Brennan to look up the owner of automobile bearing license Q 202, and to report to me or Ruddy as to who the people were, their residence address or their business. This took until 2:00 P. M. I was instructed by Ruddy to do this. I called Ruddy and told him the investigation I had made and he told me to come to Wardman Park, which I did about 2:15 and remained until about 3:00. Ruddy gave me instructions to find out where there was located in Washington a barber named Kidwell; to find out his place of business for the purpose of obtaining a description of him so as to be able to identify him, if necessary, at some later date. He told me to start my investigation in the Anacostia section of Washington. He said this barber was a brother of the juror. He did not say where this barber was located. This was not the first designation I got to shadow or observe an individual while I was down here.

Thereupon the following occurred:

Q. On what prior occasion were you designated or instructed to shadow or observe the movements of any particular person?

Thereupon an objection was made on the ground that this question was based upon the predicate that in this particular instance the witness was to shadow Kidwell, the barber, when he testified that he was directed to locate him, and the objection was overruled by the Court.

Thereupon the witness continued as follows:

At no time was there a prior occasion when I was instructed to shadow any particular person. Prior to
389 the time that I came down here in this case I had not done general work, including roping. On the assignment given me by Ruddy about 3:00 o'clock I returned to the Mayflower where I referred to a city directory. I made inquiries as to what comprised the section of Anacostia. I had no idea of the location, and I know nothing about the streets or lay out of Washington. I took from this city directory the names and addresses that I was told would appear in the Anacostia section. I went there alone, arriving about 4:15. I had heard the name Kidwell before, in what way I do not know. I had read in the papers that there was a juror by that name. When I went to Anacostia I went to a house on U Street, where I saw a woman. There was a conversation between us. Immediately after that conversation I went to the barber shop, which, I was informed in the conversation, was located in the Myrtle Hotel basement. It was there that I saw this man whom I identified today. I had a talk with him and after that talk I returned to Wardman Park, where I saw Ruddy and Day in Ruddy's apartment. I verbally reported to Ruddy what had transpired when I was in Anacostia when I went to the U Street house and what transpired when I went to the barber shop. We were all standing in the room, which is perhaps 12 by 20 feet. Day was 4 or 5 feet from me. I do not remember where Ruddy was standing. This report was made in the presence of Day. After that transpired I went to dinner, remained at Wardman Park until about

ten o'clock, and then returned to the Mayflower. I was there at Wardman Park for perhaps a couple of hours. Robbins and Ruddy were with me. I was present for five minutes in the same room where Day was. My verbal report as to the result of my investigation was throughout that period of five minutes. Neither Day nor Ruddy said anything. From Wardman I went to the Mayflower and remained there until about midnight, when I retired.

390 The conference on the midnight of October 22nd when Ruddy and I had present the various operatives at the Mayflower lasted about an hour or an hour and half. On that occasion nothing was said about Juror Kidwell, as far as I was concerned. I do not recall any reference being made about an incident said to have occurred during the trial of the Fall Sinclair case. I certainly do not recall anything being said in which the phrase "something going wrong" was used. I do not recall Ruddy's giving any reason for the shift of the operatives, and I had no reason to give.

On the morning of October 26, I left the hotel about 7.30 A. M. and proceeded to a house at 1409 Sixteenth Street. I went there under the directions of Ruddy. He told me to hold H. R. Lamb under surveillance. Lamb was the second person designated as an individual that I was to observe or place under surveillance. Ruddy said that Lamb was the man that had been talking with Juror Glasscock on the afternoon of Saturday the 22nd, at Potomac Flying Field. He said that Lamb was a Special Agent of the Department of Justice, and worked in the Department of Justice Building. That is all that Ruddy said, except I think he read to me a description of Lamb which he obtained from a report submitted by L-36, Long. I did not read that report. I went to that neighborhood on 16th Street, where I observed a gentleman coming out who answered the description as given to me by Ruddy, and I followed him to the Racquet Club. I would recognize that man if I saw him again. I then followed him to the Department of Justice Building where he entered. About an hour later on the corner I met Ruddy and at 12:30 or 1:00 o'clock I gave Ruddy a designation on this man and identified him

391 as he came out of the building. Ruddy followed him

somewhere in the neighborhood of the Department of Justice Building. There was a time when Ruddy and I were together when Lamb was inside. I left Ruddy when he followed this man. On that occasion I orally reported to Ruddy what had observed of Lamb's movements since that morning. The best of my recollection is that I went to lunch then and returned at about 2:30 or 3:00 and remained in the neighborhood of the Department of Justice Building with Ruddy. Lamb came out around 4:30 and proceeded on foot to his home and I followed in an automobile. He went to his home at 1409 Sixteenth Street, Northwest and came out of an alleyway with an automobile bearing license number P-1738 and proceeded through various streets from 5:00 o'clock until around 1:00 o'clock the following morning. I am not familiar with all the streets here and I do not know where he drove. I had him under surveillance until around 7:00 o'clock, about 20 miles from Washington at Campbell Corners. His car entered and when I followed I found it was the entrance to the Congressional Country Club. I was asked if I was a member of the club, and said I was not, so I returned to Wardman Park. I haven't the slightest idea where Campbell's Corners is. I think I would recognize the place. There is not a police station there. There is a sign at the intersection of the road. When I went to Campbell's Corners following this automobile, I haven't the slightest idea on what streets I went. I was not in a taxicab, but was driving. No one was with me. I merely followed this automobile. I had that automobile constantly under observation until I reached Campbell's Corners, not farther than perhaps 100 or 200 feet behind it at all times. Lamb was the only person in his car.

When I came to the intersection where is the sign
392 "Campbell's Corners" I turned to the left. I went about a half mile before I came to the Congressional Country Club. Then I returned to Wardman Park and reported orally to Ruddy what had happened. Merritt was there, and I asked Ruddy if I could take Merritt back with me to this Country Club so that he could go in on foot to see if this automobile was parked within the grounds. We went out there but we didn't find the car. I drove out the same identical way that I went the first time. I could not tell the route I took. I eventually found myself, I think

on Illinois Avenue, and my point of location was a building marked "Chevy Chase Coal & Wood. I turned to the left. I had no difficulty once I placed that coal yard. The road then was a straight one with no turns. I went to Campbell's Corners again and then to the Congressional Country Club. Not to my recollection did I pass any other club. The first time I went out Connecticut Avenue. The second time I do not think I did. I got my bearings on my return the first time as to where I had been, and when I came back I found myself on what I still think is Illinois Avenue. My point was the Chevy Chase Coal Company, where I made the turn. I found upon returning that I could come back to Wardman Park a different way than I had gone out, saving in distance perhaps a mile or two, which I did. Merritt came back with me the second time. We came down through 16th Street, I think, and at an intersection about four blocks from the Department of Justice Building I observed the Oakland roadster which I had been following for 2 or 3 hours previous. This was about 10:30. We immediately proceeded to follow the car, which went to the corner of the Department of Justice Building, where two ladies entered it. I would not recognize those ladies if I saw them again. The driver of that car drove through various streets of Washington, and within
393 the next hour or so left the ladies at different homes.

I think the addresses of those homes were obtained by Merritt and were reported in his report. I first observed the car about 5 blocks from the Department of Justice, but I haven't any idea as to the streets. It was, I believe, between the Mayflower and the Department of Justice. The car was turning the corner when I first picked it up. I was going south and this car came at right angles right in front of me. I had to pull out in the middle of the street. I was about 5 or 6 feet away. I recognized in the car the man answering the description that Ruddy had given me. From that time until the time these young ladies got in the car I had the car under observation about half a block behind it. Up until the time the young ladies got in the car had not stopped. They got in directly in front of the Department of Justice Building on the sidewalk that approaches the doorway at the end of the walk on the curb. I first observed the young ladies as the car swung around in

front of me to come back and stop in front of the Department of Justice Building. When that car stopped I stopped my car in the opposite direction on 14th Street. I pulled down and parked at the curb. After the young ladies boarded the automobile, I followed it and within 3 or 4 blocks I found myself on 16th Street going out of the city. Thereafter various turns were made. What streets we were on I have no idea. That continued for about an hour before anyone got out of the car. During all this time Merritt was with me. I have no idea where it was that the automobile first stopped. Merritt got out of the car and took the address. I was stopped about a half or three-quarters of a block behind them for not more than twenty seconds—just for this lady to alight and shut the door of the car. That car then moved on, and I moved on
384 and picked Merritt up at the other corner, giving him an opportunity to make notation of the house and its number and the street. Merritt ran from my car to the place where he took the notations. The other car moved on about a quarter of a block and turned around directly in the middle of the block and came back toward me. I passed it as it turned around. It went up into a driveway into reverse and came toward me. One young lady was still in it. I made the same turn and followed the car again. This lady was let off perhaps in a mile. Merritt did the same thing he did on the other occasion. My car stopped about a quarter of a block behind the other car and Merritt got out. I know where the Union Station is, and I don't think on this second time the car was within three miles of there. After the lady got out the car was driven and eventually arrived at 1409 Sixteenth Street. I trailed the car there. It took about 10 or 15 minutes. After Lamb's car was put in the alley and presumably into a garage I circled the block to take a position of advantage and remained there in event the operator of the car came out again. I remained there about an hour and then returned to Wardman Park with Merritt and reported to Ruddy. That was about 1:30 or 2:00 o'clock. I did nothing further that night.

I was not actively engaged on the morning of the 27th. I remained in my own room at Wardman Park until about

3.00 P. M. I engaged a room at Wardman Park in the afternoon of the 26th, at the direction of Ruddy. Around 3.00 or 4.00 o'clock I returned to the Department of Justice Building, at the direction of Ruddy, for the purpose of again putting Lamb under surveillance. I remained there until 5.00 o'clock, and not seeing him come out I went to the 16th Street address, where I remained close to midnight. I didn't see the gentleman. I returned to Wardman
395 Park and reported to Ruddy, and retired to my room. That is all I did that day. When I engaged my room at Wardman Park I released my room at the Mayflower.

Sometime during the morning of the 28th Ruddy assigned me to make a credit investigation of Juror Kern. Up until this time I do not believe that Ruddy or any of the operatives had spoken to me about Kern. Ruddy told me to find out, if I could, in my own way, as to the responsibilities of Kern. He told me to find out if he owned his own home, and if so, to make an investigation if the mortgage had recently been paid off. I did not ask Ruddy what he meant by the word "responsibility." I was given instructions that I thought were definite enough. I thought from my experience that I knew what he meant. I went to the District Building to first obtain the ownership of the premises where Juror Kern lived. I believe Ruddy had given me the address as 1315 North Carolina Avenue, and I think I made a very crude memorandum of it on the back of some envelope. I reported to Ruddy everything I ascertained during this investigation. I first learned that the premises were owned by Kern. I then made inquiries as to where I could find out if there was any existing mortgage on this property. I was directed by the clerk to go to the Recorder of Deeds' office on Fifth Street, where I attempted to make a search of the books which were available there to the public, and after going back about two or three years I found nothing there that was recorded to correspond with the name Kern or with this property 1315 North Carolina Avenue. I asked one of the young ladies if it was possible to obtain the history of this house, as to what the mortgage might be, or who the tenants were, or who the landlord was, and she said this was not possible unless I knew when the property was purchased or taken over by the

396 present owner. I returned to Wardman Park and made a verbal report to Ruddy that unless some definite time could be stated as to when this property came into the possession of Kern it was almost impossible, from the records available there, to make a thorough investigation; but that I had satisfied myself that back to January 1, 1927, no release or satisfaction price had been issued against that particular house in the way of payment of the mortgage, trust receipts, or whatever it was. There was no one with Ruddy. He told me to continue surveillance of Lamb the same afternoon. I returned to the Department of Justice Building around four o'clock and again waited until a quarter of five. I did not see Lamb come out. I again returned to the neighborhood of 16th and P Streets and waited there until around 11.00 or 11.30 and did not see either man or car, so I returned to Wardman Park, reported to Ruddy and discontinued for the day and went into my room. I have told the Court everything that transpired up to and including the night of October 28th. Written reports were made of my activities up to and including October 28th.

On the 29th I received instructiions from Ruddy to meet Merritt and about noontime we placed Juror Glasscock under surveillance. Ruddy told me I was to act in the capacity of chauffeur for Merritt, as he could not drive an automobile. Around noontime we went to the street on which Merritt told me Glasscock was engaged in business and we observed his automobile parked in this street, and I parked my car perhaps a block away, where we remained until around 4.30, at which time Glasscock entered his car and drove to his home. Merritt told me that he knew where Glasscock's place of business was but did not discuss his home. After he came out of his place of business

397 I learned for the first time where his home was. When he pulled up and parked his car Merritt said, "That is where he lives." His car was parked and we remained until 7.30, when he came out and drove about 3 blocks to a gas station, which was advertising giving away a gallon of oil with each 5 gallons of gas, and we unfortunately got in the same line and remained there for an hour or more until he purchased his 5 gallons of gas. As he left the gas station I followed him back to his home. He put

the parking lights on his car and entered his house. We remained there until midnight, but he did not come out again. On the first occasion when I followed him to his home I parked the car about a block away. That was the closest I ever was to his house. I have told everything that happened up to and including October 29th.

On October 30th I left the hotel around 6:30 A. M. in company with Merritt. We went to the neighborhood of the residence of Glasscock and saw Glasscock's automobile parked where he had left it the night before, when we had last seen it. We remained there until about 2:30, at which time Glasscock came out with two women, two children and an elderly man, who sat next to him, and he proceeded through Washington until he reached a point that I recognized, from the signs, as Silver Spring. There they entered a house, where they remained for an hour and a half or two hours and then came out. It was getting dark. They returned to their home around 6:30 or 7:00.

Thereupon Mr. Norman Glasscock, a juror in the Sinclair-Fall trial arose and was identified as the man who drove the automobile.

Thereupon the witness continued as follows:

After they entered the house we remained there until about 1:00 o'clock the following morning. The car
398 was still parked there, and we returned to Wardman Park. That is everything that happened.

On the morning of October 31st, around 11:00 A. M. I reported to Ruddy in his room and he asked me to continue in obtaining the further movements of Lamb, sometime that afternoon. I left the hotel about 12:00 o'clock and when I got downtown I had lunch and then called Ruddy back and told him that I was proceeding and asked him if I should go ahead as I had started. He told me to call him back in 15 minutes. I did so, and did not get any answer. I called back in half an hour and did not get any answer. I called in an hour and did not get any answer. I returned to Wardman Park, where I received a visit from McCahill, a secret service man.

Thereupon the witness was handed Government's Exhibits Numbers 209, 223, 237, 253, 268, 282, 294, 301, 307, 190,

170, 186, 161, 317, 315 and 316, which he identified as all being his handwritten reports of his activities from October 19 to October 30, inclusive.

Thereupon the witness continued as follows:

My recollection is refreshed as to what transpired on October 26th when I got to Campbell's Corner, after reading my report of that day. When I got there after trailing the man who answered the description of Lamb, his car stopped and I proceeded past him. There is a slight grade. I went on perhaps 50 or 75 feet, pulled over to the side of the road and turned out my lights. As I did so I looked through the back of the car and I could see this car as it turned around in a circle and proceeded on the road that went to the Congressional Country Club. I immediately turned around and took this right hand turn and observed the car perhaps 100 yards ahead of me and continued on following that car until it went into the grounds of
399 the Congressional Country Club. On that occasion when I passed the automobile, I came within 5 or 6 feet of it.

I believe that I came down to the court house on Thursday, October 20th, about 12:00 o'clock. I remained in the neighborhood until about 2:00 o'clock. Robbins came down with me.

Thereupon Mr. Horace R. Lamb stepped into the court room and was identified by the witness as the man whom he followed in an automobile on October 26th and as the man whom he had reference to when he spoke of picking up the girls near the Department of Justice Building.

Thereupon the following occurred:

When Robbins and I came to the court house I let him out at the foot of the steps at the main entrance of the building. I was with Robbins before I left him there no more than 10 or 15 minutes.

Thereupon the witness continued as follows:

Q. And you remained in this neighborhood until about what time?

Mr. Douglas: He has answered that twice.

Mr. O'Leary: I want to make sure about this.

Mr. Douglas: You are sure when you know he did.

The Witness:

A. I don't know if it was this neighborhood—I remained and waited for Mr. Ruddy, I should say it is about six or seven blocks from here—Seventh Street, I think it is, Seventh Street and what I now learn to be E Street, Seventh and E.

By Mr. O'Leary:

Q. Now, will you please answer my question, sir: How long did you remain here after you met Mr. Robbins? A. I did not remain, I went to the place, yes, sir.

400 Mr. Wright: I object to that question, because it has been asked and answered two or three times. On 1128 of the record the witness is asked by the District Attorney:

"Q. What did Mr. Ruddy tell you before you came down? "A. Simply to accompany Mr. Robbins down to the court house and to call him when I reached—after I had left Mr. Robbins to call him for any further instructions that he might have to give me.

"Q. And did you call him? "A. I did.

"Q. And did he give you further instructions? "A. He told me to return to the Wardman Park Hotel.

"Q. And you did that? "A. I did.

"Q. What time was that? "A. I think around one o'clock.

"Q. In the afternoon? "A. Yes.

"Q. When you went to the Wardman Park Hotel, whom did you see?" and so on.

Mr. Gordon: That doesn't answer the question.

The Court: That he returned to the Wardman Park Hotel. The question, as I understand it, is how long did the witness remain wherever he remained after parting with Robbins at the court house building here.

By Mr. O'Leary:

Q. You understand my question, don't you, Mr. O'Reilly? A. I believe I do.

Q. Why don't you answer it, sir? A. I have an-
401 swered it twice.

Mr. Hoover: I object to that.

Mr. Wright: Now, I object to that, and for the misconduct——

Mr. O'Leary: Wait a minute. Go ahead.

Mr. Wright: I ask your Honor to strike out that question on account of the manner in which it was put.

The Court: What was the question?

Mr. Wright: "Why don't you answer it?" Was the question, in that tone of voice. I object to it as misconduct and I want the record to show that the emphasis was just as I put it.

Mr. O'Leary: Put that emphasis in the record, Mr. Reporter, please. Underscore and stress it.

The Court: What is the question?

(Thereupon the following was read by the reporter as above recorded:)

Q. You understand my question, don't you, Mr. O'Reilly. A. I believe I do.

Q. Why don't you answer it, sir? A. I have answered it twice.

Mr. Wright: Now, there was no occasion for that observation, nor for the tone of voice in which it was directed.

There was a debate on between counsel and the Court and that is no proper way, and I protest against it and object to it as misconduct and call on your Honor now to rule out that kind of a question.

The Court: Well, it came rather quickly, that is, "Why, don't you answer?" came rather quickly upon the preceding question, and I don't think the witness had had quite
an opportunity to answer it. But he did answer.
402 He said that he had said so twice. That he had stated it twice before, isn't that it? (Addressing the reporter.)

(The reporter answered in the affirmative.)

Mr. Wright: What is the ruling?

The Court: That is the only thing, I am saying. Your protest has been recorded. Now let us get on with the testimony.

Mr. Wright: Your Honor declines to strike out the question?

The Court: Yes.

Mr. Wright. I reserve the exception.

Mr. Court: Yes.

Thereupon the witness continued as follows:

After I left Robbins at the foot of the steps of this court house, I left immediately, and walked in the direction that I know to be toward 7th Street. I went down this street and then up to the next street, which I think is E. Perhaps I walked along this street right in front of the court house. I left from the foot of the steps and going toward 7th Street. I may have gone through D Street and then walked up 5th Street, I think it is, to E, and through E to 7th. That is one block here, one block to the right, and then a left-hand turn 3 blocks or 2 blocks to 7th Street. Looking out of the court room window I see two streets there, one going straight ahead and one crossing at an intersection. In that interval from the time I left Robbins to the time I stopped at 7th and E Streets, I talked to no one. I am positive of that.

Thereupon Juror Kidwell stepped into the court room and faced the witness, and then stepped out.

403 Thereupon the witness continued as follows:

I had a very good look at that man. I have never talked to him in my life. I don't think I was ever in the neighborhood of the court house on any other day than the day that I have mentioned. I am positive that I never approached Juror Kidwell. Juror Kidwell positively never talked to me any where or at any time. I never did any shadow work prior to the time that I engaged in the activities that I have described to the Court, nor had I done any similar activities before. I had not had any experience before in surveillance or observation of jurors in any case. I do not know where is located in this District a certain piece of land called the Smithsonian Institute Grounds.

During the trial of the Sinclair oil case, I was never in the court room. During the trial of the Sinclair Oil Case there was never a transcript of the proceedings of the trial going on in any room in which I was.

Thereupon the witness was cross-examined by Mr. Douglas and the following occurred:

Q. Mr. O'Reilly, when you went to the house on U Street, I believe you said it was 1637, and you met Mrs. Kidwell, will you state to the Court what inquiry, if any, you made of her and what remark or question you addressed to her? A. In answer to my ring of the bell at this house, this woman answered the door. I asked her if there was a tenant in that house named Kidwell that was a barber.

Q. Named what? A. Named Kidwell that was a barber.

Mr. O'Leary: If the Court please, I must apologize for my inattention, but I was being asked a question. I object to the question on the ground that it is beyond the scope of the examination in chief, and as my objection may technically come too late, I move that the question and

404 the answer be striken out.

Thereupon the objection was sustained and the motion to strike granted by the Court, and an exception was duly noted.

Thereupon the witness continued as follows:

I was sent to Anacostia for the purpose of locating and seeing a Kidwell known as Barber Kidwell. I was not asked or directed by Ruddy to locate or see or come in contact with Juror Kidwell. Ruddy told me that he thought that the barber, Kidwell, was a brother of Juror Kidwell. When I went to Anacostia I was upon the performance and execution of a particular mission that Ruddy had given to me. It was about 3:00 o'clock in the afternoon of the 24th of October. I did not seek to locate or to find out anything whatsoever about Juror Kidwell when I went there. I had never been in Anacostia before. Upon my arrival in that section that I was told was Anacostia, I made inquiries as to a barber named Kidwell in that section of individuals on the street along Nichols Avenue, somewhere after I crossed this bridge going into Anacostia. I asked at least 5 or 6 people where Barber Kidwell lived. I was told by one individual

that he believed there was a barber living on U Street named Kidwell, but he did not know what number. I referred to the list of Kidwells which I had compiled before leaving my hotel. I had in this list, as I remember, 3 or 4 who lived at number 1637 U Street which house I went to. At the time I went there to locate Barber Kidwell I did not then know the name, or the full name and initials of Juror Kidwell. When I went to this house, 1637 U Street I rang the door bell. At no time did I go inside the house. I was not there more than 2 or 3 minutes. I stood on a small porch in front of the front door. When I rang the bell an elderly lady, resembling the lady I saw yesterday,
405 came to the door.

Thereupon the following occurred:

Q. Did you ask her, for or anything about, Juror Kidwell? A. I did not.

Mr. O'Leary: I object to that, if the Court please, and move to strike it out.

Thereupon the motion to strike was granted by the Court and an exception duly noted.

Thereupon the following occurred:

Q. Now do not answer this question until his Honor states that you can. Why did you go from 1637 U Street to the barber shop at the Myrtle Hotel?

Mr. O'Leary: Objected to if the answer elicits any part of the conversation or which elicits any matter beyond the scope of the examination in chief.

Thereupon the objection was sustained by the Court and an exception duly noted.

Thereupon the witness continued as follows:

The Myrtle Hotel is about 2 or 2½ miles from 1637 U Street. I had never heard of the existence of the Myrtle Hotel before I went to Anacostia on October 24th. I first learned that there was such a hotel on October 24th, at about 4:45 P. M.

Thereupon the following occurred:

Mr. Douglas (addressing the witness): Don't answer this question until told to answer.

Mr. O'Leary: Now, if this is a question designed to bring out this conversation, of course, I object.

Mr. Douglas: I understand your Honor rules——

406 The Court (interposing): Well, I understand you to say it is designed to bring out a part of that conversation.

Mr. Douglas: It is designed to bring out the fact that Mrs. Kidwell told him where the husband'd barber shop was. I have no desire to bring out any other conversation.

Mr. O'Leary: I trust your Honor understands that the Government objects.

Thereupon the objection was sustained by the Court and an exception duly noted.

Thereupon the witness continued as follows:

When I went to that house in Anacostia I did not know that Juror Kidwell lived there. I ascertained some time after I left Anacostia that this juror lived at 1637 U Street. I learned it when I returned to Wardman Park about 9:00 P. M. that night. I had no idea of it then. I did not know Juror Kidwell's initials. On the occasion of this trip to Anacostia I did not make any inquiry of anybody what soever between the time I went to Anacostia and the time I returned from Anacostia about Juror Kidwell. Concerning Barber Kidwell, I was directed to learn his place of business; to go there and look at him for the purpose of being able to give another operative a designation on this man at a later date, if so desired. I found Barber Kidwell in his barber shop at the Myrtle Hotel. I did not go inside of the shop. I was there one minute.

Thereupon the following occurred:

Q. Now, don't answer this question: Did you ask him any question concerning anyone?

Mr. O'Leary: Objected to, if the Court please.

The Court: I ask counsel propounding that question if that is designed to bring out a part of the conver-

407 sation he had with the barber.

Mr. Douglas: Yes, sir.

The Court: Objection sustained.

Mr. Douglas: Exception.

Mr. Hoover: Exception on behalf of all these respondents.

By Mr. Douglas:

Q. Now, don't answer this question: Was Juror Kidwell's name called or mentioned in that conversation, either by you or Barber Kidwell?

Mr. O'Leary: Objected to, if the Court please.

The Court: I understand that is designed to bring out a part of the conversation.

Mr. Douglas: Yes, sir.

The Court: Objection sustained.

Thereupon the witness continued as follows:

I only went to the door of the barber shop to look at him. I said something, and he said something, and I went away.

Thereupon the following occurred:

Mr. Douglas: I think this question is competent, your Honor, but I will ask this witness to wait.

By Mr. Douglas:

Q. Isn't it true that on the occasion that you saw Barber Kidwell, that not one word was said about or concerning in any way with reference to the juror?

Mr. O'Leary: Objected to, if the Court please, because what was not said depends on what was said, so we can see what was omitted.

Thereupon the objection was sustained and an exception duly noted.

408 Thereupon the witness continued as follows:

Mr. Ruddy gave to me orally a description of Lamb before I undertook to locate or shadow him. Long gave me some physical characteristics of the man that were of value to me in locating him. That was before I started to locate him. On one occasion he described his walk; I believe it was in my room in the Maytlower on the 23rd of October. Then the following morning at the District Building he again gave me a verbal description of the individual. He told me this man threw his feet sideways in

taking steps. That description made it possible for me to recognize this man as he left his home on the morning of October 26th, on 16th Street. I saw more than one man leave that house. I saw a man leave with a woman; I saw a man leaving alone; I saw a man, and I think a boy leave that house on that morning. I saw Lamb come out that morning. I distinguished him from the others by his blue suit and his walk, which was very marked. When Long made the report of October 22nd he gave the number of the automobile license, but not the name or individual driving that machine. I did not know at the time of the handing in of that report by Long, that this machine belonged to Lamb of the Department of Justice. On Sunday morning the 23rd, about 1:30 Long asked me if I could not call the District License Bureau and take advantage of the all-night service that the Police Department uses in calling that building to obtain information. I didn't go down on Sunday, but waited until Monday. I didn't think it necessary at that time and told him Monday morning would be early enough. Long went with me to the License Department when I looked it up on Monday morning. I got the owner of that particular machine from the records. Long was with me. I don't know whether I informed Long that it belonged to a man named Lamb. Even then I didn't
469 know who Lamb was. I think it was the evening of this same day that I located Lamb as being in the Department of Justice. It was two days later that Ruddy and I, either singly or together, shadowed Lamb. I never did shadow Juror Kidwell, nor his father, nor any members of his family. I came here from the New York office. Merritt came with me. Sherman Burns sent me. He told me I was going to *going to* Washington to assist Ruddy in the operation of shadowing certain jurors in a case then on trial in Washington. He told me he had given Ruddy certain instructions which he, in turn, was to give the men, and he asked me, upon my arrival, to convey the same message to each man as I interviewed him, as I was acting as contact man between Ruddy and the operatives. He told me I was to carry out the instructions which he also gave me, that no man under any circumstances was to approach in any way whatsoever any juror being shadowed, or have conversation with, or physical contact with any juror being

shadowed. He told me he had given these instructions to Ruddy, and wanted me to carry the same message to each man; and in event of any violation of these instructions by any man, I was to send him immediately back to his office, or report to Ruddy. I told Ruddy that message of Sherman Burns immediately upon meeting him at the Union Station. I was not present when Ruddy gave instructions to the men on the morning of the 19th. Most of the men told me, when I started to refer to the instructions, that Ruddy had already given them, and they had observed them to the letter. The men were instructed to drop their work immediately and communicate with Ruddy in case they thought that they were being suspected of shadowing a juror. They were told to have no conversation whatsoever with and no contact whatsoever with any juror. I
410 know Vietsch, the Baltimore manager. He had nothing to do with this matter at all, except to bring that money over here. I saw him once during the time I was in Washington. I met William J. Burns for the first time in my life on the morning of November 7, 1927, upstairs in the court house, when I was on subpœna to the grand jury. I requested that morning to be introduced that morning. As far as I know he had nothing whatsoever to do with this matter.

Thereupon the witness was further cross-examined by Mr. Crim, as follows:

Before going to Anacostia I compiled a list. I referred to the classified section of the Washington telephone book, looking for a barber by the name of Kidwell. I referred to the city directory, and having been informed as to what comprised the section of Anacostia, I confined myself to that section, and I compiled a list of probably 8 or 10 names. At the time I compiled the list I did not know the name of Juror Kidwell. I compiled the list about an hour before I went to Anacostia. On the day that I went there I first heard the name of Juror Kidwell mentioned about 3 or 3:15 that afternoon. Ruddy first mentioned Juror Kidwell to me on that occasion. It was at Wardman Park. I left there about that time. I next had my conversation with respect to Juror Kidwell on that day at about 9:00 P. M.

at Wardman Park. When I accompanied Long to the District Building to obtain a license number, I had with me the license number and I went to get the name of the owner. Long made the arrangements the night before to accompany me. He offered to take me down in his car to save time. Brennan and Steer also accompanied us in the car to this building. When we arrived there all four of us went in
the building. We went to Room 112 and saw two
411 ladies, whose names I do not recall, but whom I had seen several times before. I had been there on Thursday, Friday and Saturday previous. The room given to the records of automobile registration was a fairly large room, about 30 feet across and about 45 or 50 feet long. There were three women and one man in the room when I went there. The young lady recognized me as having been there on previous days and she asked if I wanted the benefit of the book, if I wanted to look up some numbers. I told her I had 3 or 4 there that I would first look up and an additional list later I would take my time on. I wanted to get these men with me assigned to certain duties. There is a man there whose name, I think, is Sullivan, who aided me in obtaining some of these names and addresses. I referred to the book and I got the information which I wanted to get. First I obtained about four. Lamb's name was one of this four. The book was on this lady's desk. It is a large book in numerical and alphabetical order. It took me about ten minutes to get those four names. I was not having any conversation with Long while I was looking for these names. He was standing a few feet away with Steer and Brennan. He said, "Who was that man that was talking to Juror Glasscock? Was that the man you looked up?" I said, "Yes, P-1738." He said, "What is the name?" And I said, "It is H. R. Lamb." He said, "What is his business?" I said, "The record don't show. All it shows was the address." I immediately gave Steer the name and address on 16th Street and said, "Go out and find who this man is, what his place of business is, and his residence, and any information generally." Steer left immediately. I assigned Brennan to find out who the owner of a Chevrolet

Coupe, U-202 was and what the place of business and address was. I left Long on the corner of Pennsyl-
412 vania Avenue to go to the court house, I think to cover Juror Glasscock, whom he was shadowing at the time. Whether or not he arrived here I do not know. Ruddy had assigned him to Glasscock 3 or 4 days previous.

Thereupon the witness was further cross-examined by Mr. Hoover as follows:

When I returned from Anacostia I went to Wardman Park, where I saw Ruddy.

Thereupon the following occurred:

Q. On your direct examination you were asked this question:

"Did you report to Mr. Ruddy what had transpired when you were in Anacostia when you went to the U Street house and what transpired when you went to the barber shop? A. That is right.

Q. Wait until the ruling is made. If objection is made to the queston, do not answer it. I now ask you to state what you reported to Mr. Ruddy at that time?

Mr. O'Leary: I object to it as calling for information beyond the scope of the examination in chief.

Thereupon the objection was sustained by the Court and an exception duly noted.

Thereupon the witness was further examined by Mr. O'Leary as follows:

Prior to the time I went to the house on U Street I did not telephone to anybody to make inquiries. I have never heard of the name Teats before in my life. I stood on a small porch in the front of the front door, about 3½ or 4 feet wide. I do not know how long it was I was fac-
413 ing the door and not the porch. I carried a message to Ruddy from Sherman Burns as to what the operatives and I should do in the event that the identity of any operative should be disclosed. I got that message from from Sherman Burns in the New York office on the afternoon of October 19th at 3:00 P. M. and I delivered it to Ruddy at ten o'clock the same night upon my arrival in

Washington. Burns said he had spoken to Ruddy on the long distance telephone, and that Ruddy had undoubtedly seen a number of operatives already engaged on this case. He told me to repeat the message that he had already given Ruddy to the men that I saw; that these men were not to hold any conversation or approach any juror in this case, and if they did and such a report was made to me or if I knew that such an occurrence was made to Ruddy, those men were to be returned to their respective offices immediately. In the event that the identity of any operative should be disclosed, the instructions were that he was to drop work immediately. That was the general understanding between Ruddy and the men. I think the men knew it from experience. My recollection is that Sherman Burns said that these men were experienced shadow men and know that if they are observed they will drop their man immediately. He said, "Repeat to them the message that I am giving to you now." I brought the message to Ruddy and he said that he had already received those instructions in detail word for word over the telephone from Sherman Burns on the day previous. On the 19th Ruddy positively did not tell me this: "If any of the boys have their identity disclosed, for God's sake do not say they are connected with the Burns Agency, and the Burns people will take care of them." Sherman Burns did not say that to me. I never heard that conversation used. I was not present on an occasion when all of the credentials were either
414 taken away from the operatives or the operatives surrendered their credentials. I once saw the respondent Vietsch. It was at Wardman Park in Ruddy's room. It was in the first five days that I was in Washington, which would be around the 24th or 25th of October. It was sometime during the afternoon. I was in Ruddy's room on that occasion for about an hour. Vietsch was there for about 10 or 15 minutes. Robbins was also there. While Vietsch was there there was a general conversation. I first met William J. Burns Monday morning, November 7th. It was upstairs in this building. I had instructions that in the event the identity of any operative became known by the juror that he was shadowing, that that operative should be taken off the juror, provided the man decided that he had been observed. That was up to the man. If he decided

that he had been observed shadowing the particular juror whom he was shadowing, he was to report himself to either Ruddy or me. Not one operative reported to me that he had been observed or he was satisfied he had been observed or turned up.

Thereupon the witness was further cross-examined by Mr. Crim as follows:

When I was in Anacostia I inquired of several people where Barber Kidwell lived. Those people were absolute strangers to me.

Thereupon **Barton P. Stewart** was called as a witness for the United States and being first duly sworn, was examined and testified as follows:

I am employed by the Burns Detective Agency and have been so employed for 3½ to four years at the Philadelphia office. I was assigned to come to Washington in connection with the surveillance of some persons during the
415 Fall-Sinclair case. I received my instructions from Ruddy on the morning of October 19th in the National Hotel. Welchans, assistant manager of the Philadelphia office instructed me to proceed to Washington and meet Ruddy. I proceeded to Washington that evening and arrived at 8:15 on the morning of the 19th. My designation was S 71. I was not here the evening of the 18th. I received no instructions until about 5:15 on October 18, and I was instructed to remain at my house and be picked up by Philadelphia Investigator L 36, as we were going to motor to Washington. We stopped in Baltimore about 3:00 o'clock on our way to Washington. There were three in the party, L 36, a man named Belmont who was sent back to Philadelphia, and myself. We got here about 8:15, and met Ruddy at 8:30, and at that time Belmont was directed to catch the next train back to Philadelphia. All three of us stopped off at Baltimore. We were not instructed to do so, but it was raining, and a long drive, and we wanted to get some rest, so we spent the night there. I think we stopped at the Kernan Hotel. I did not see Ruddy in Baltimore that evening, nor did I communicate with him that evening. I did not see Vietsch in Baltimore that evening. As soon as we got in Washington on the morning of the 19th

we proceeded to the Union Station, where we met Ruddy by appointment. The day before when I was instructed to come down to Washington I was told to meet Ruddy in the morning at 8:30 at the Union Station. L-36, Long and Belmont were with me when I met him. Robbins was with Ruddy. We were all assigned to hotels that morning. I don't recall to which hotel I was first assigned. I stayed at the Harrington until October 25th. I did not have a room at any other hotel. The first hotel I was assigned to was undesirable. It was picked at random from the tele-
416 phone directory. I was later sent to the Harrington. Robbins picked it. I do not know the name of it. Long stopped at the same hotel I did. Before I went to the Harrington I received my instructions at the National Hotel, in Mr. Klein's room, about 11:30. Long, Klein, Hom-righausen, Kirby, Robbins and Ruddy were present. I handed in my credentials on that occasion to Ruddy. All marks of identification were handed over to Ruddy. I don't remember anything being said about whether or not I should disclose my identity. I believe I was told to get in touch with Ruddy if I got in trouble, or be interrupted at any time on the street, or anything. I recall nothing being said about the Burns Agency taking care of me. I was told what my duties were to be. I was to shadow Juror No. 5, Mr. Kidwell.

Thereupon Mr. Kidwell arose in the court room and was identified by the witness as Juror No. 5.

Thereupon the witness continued as follows:

Kidwell was not described to me at that time. I was told to proceed to the District Court and enter the court room and get a designation on Kidwell. I went to the Capitol by mistake and didn't pick him up that day. I stayed about two hours at the Capitol. I did not see Kidwell that day. I came down to the court house that day but it was too late to get in. Then I went to the vicinity of Kidwell's home, but I didn't see him. I was given the number of his home address. Nobody went there with me. I had never seen Kidwell at that time. I didn't know him by sight, or by description. O'Reilly gave me the address of Kidwell. I had been in Washington about a year previous, but I do

not know my way around. I saw Kidwell for the first time on the morning of October 20th.

417 On Thursday morning, October 20th, as far as I can recollect, I came down to the court house and got a designation on the juror inside the court room. I was in the court room by myself and nobody pointed him out to me. I learned who Juror Kidwell was through his position, Number 5. He was sitting in the jury box when I saw him. I remained in the court room maybe 15 or 20 minutes, and then walked outside. I saw Kidwell again when court adjourned for lunch. I held him under surveillance. I don't recall where he went to. On one occasion he walked to the Museum park back of the market house, and ate his lunch standing up by a tree. I kept him in sight all the time from the moment he left the court house until he got down to the Museum back of the market house. I saw him all the time he was there. I was about half a block, or three-quarters of a block away. I did not see anybody approach Juror Kidwell while he was in that park, nor did I see anybody talk to him while he was there. All the time I saw him in the park he was just standing there eating his lunch. After he got through he walked away. I don't know whether he was in the middle of the park, but he stood near a tree. There were no branches there. I did not see anybody close to him. To the best of my recollection he walked back to the court house from the park. No one was with him when he came back from the market house. I don't remember whether I stayed at the court house, or whether I came back at 3.00 o'clock at the time court adjourned. This luncheon incident in the park took place on the first day that I secured the designation, but that was the second day I was here, which was October 20th.

Thereupon the witness was handed Government's Exhibit 198 which he identified as his report of October 18th; Government's Exhibit 211 which he identified as his report of October 19th; and Government's Exhibit 225 which

418 he identified as his report of October 20th.

Thereupon the witness continued as follows:

On October 20th when the court adjourned in the evening I was at the Court House. I saw Kidwell come out of the side door of the building and walk to 5th and G,

where he boarded a trolley car. I followed him and got on the same car. He got off at Capitol and L Streets and walked to Topham's Trunk Factory at 60 L Street. After he entered I stood at the far end of the block. I stood there until about 5 o'clock, when Kidwell came out. He entered a car with three men and they drove off. I did not take the number of the car and I did not attempt to follow as I was unable to get a cab to follow. I proceeded to the vicinity of his home, 1637 U Street, Southeast. I was down by the school house on the corner, about three-quarters of a block away. I could see his home from there. I observed his house until around 10:00 or 10:30. I did not see him any more that day. My purpose was to see him if he did come out, or to see if anybody went in. I did not notice anybody come in contact with him during the day other than the people I saw drive off in the car with him from Topham's Trunk Factory. I didn't notice anybody else keeping him under surveillance that day.

The next morning, Friday, October 21st, I proceeded out to the vicinity of his home. Around 7:00 A. M. Kidwell left the house and walked down about 6 or 7 blocks and boarded a trolley car. I followed him and got on the same car. I am not positive it was Kidwell as I did not get a good look at him that morning. He rode to some junction and then boarded another car. I followed. He got off at Capitol and L Streets, and I rode one block further, got off and put this building under observation. It was a little after
419 7 then, as near as I can recollect. The man whom I took to be Kidwell came out a little later and went to the corner of Capitol and L Streets, where he boarded a car. I got on the same street car with him. He got off at 5th and G and walked to the corner of the court house and then across the yard in this parkway here. So far as I can remember I dropped off then. I cannot say that I saw him go in the court house.

Thereupon the witness was handed Government's Exhibit 240, which he identified as his handwritten report of October 21st.

Thereupon the witness continued as follows:

I would not say that it was Kidwell that I followed, but as far as I know it was. After this man went to the court

house I was given instructions by Ruddy to pick up another subject, Grenfell, No. 9. Ruddy came to the Harrington Hotel. All he said was that I was to drop the juror I was on and pick up Grenfell. I met Sullivan over on 5th Street and he pointed Grenfell out to me. Grenfell was on 5th Street, right in front of the court house.

Thereupon Mr. Grenfell stood up in the court room and was identified by the witness as the man he followed.

Thereupon the witness continued as follows:

When court adjourned at noon Grenfell went out for lunch. He was pointed out to me before lunch, as he came out of the side of the building. He entered a restaurant across the street, and I remained outside. After he got through his lunch he walked over and entered the main door of the court house. I remained around until 2, when I went to the hotel for lunch. I came back at 3 and was informed then that the jury had been dismissed at 12:00 oclock.

420 Then I went to the vicinity of Grenfell's home, in the 1900 block on H Street. I got there shortly after 3 and stayed there until around midnight. I saw Grenfell arrive home around 4:15. I kept the house under observation from then until midnight. I didn't see Grenfell come out. I don't recall whether I was at O'Reilly's room at the Mayflower that night or not. I was still at the Harrington. I got no instructions from O'Reilly. As far as I can remember it was on Friday night after I came back to the hotel that I went to O'Reilly's room. I don't remember whether I was sent for. While in town I went to O'Reilly's room twice. The first time I went was after midnight, Saturday morning. I could not say positively who was there, but most of the men were there. I think Klein, O'Neill, Duyer, Sullivan, Robbins and Ruddy were there. That is as far as I can remember. The second occasion that I went there was the next night. I was up there another time around noon after some money. That is the only other time I was there.

421 Thereupon the witness was handed Government's Exhibit No. 256, which he identified as his handwritten report of October 22nd.

Thereupon the witness continued as follows:

On the 22nd I went to the vicinity of Grenfell's house a little after 7:00 A. M. I secured a taxicab soon after Grenfell came out of the house. A man whom I took to be Grenfell came out of the house at 8:30. That is the man I reported on, and that is the man I had been designated to shadow the day before. The man that came out went off in the Ford roadster. I wouldn't say positively that it was Juror Grenfell. I reported that it was Grenfell. It was a man that looked an awful lot like him. There was nobody with him that I recall when he came out. If there had been anybody with him I wouldn't have necessarily reported it. It might have been a member of his family. I did not know any of the other members of his family. To my best recollection Grenfell came out alone and got in the Ford roadster. I followed him in my taxicab. The car went out H Street to Pennsylvania Ave., where I was cut off and lost him at 14th Street, right across from a Government Building. I had followed him 4 or 5 blocks. I tried to pick him up by driving around the different streets in that vicinity. I didn't drive back immediately to in front of his residence, but I went back there about 9 o'clock. He returned at 9:30 in the Ford roadster. When he got out of the car he had what I took to be clothes in his arms. I was about a block away. I was satisfied they were suits of clothes. I don't know where he got them. I reported that he returned home with clothes as if he came from a tailor shop. At 10:20 a man left the place who resembled Grenfell and drove out H Street to Pennsylvania Avenue. It may not have been Juror Grenfell. I did not express any doubt in my report.

Off and on I had different cabs that morning. I
422 followed him this second time and lost him the same place I lost him before. I was in another cab. I went back to the subjects home again. About 11:15 a man whom I took to be the subject came out of the house and tinkered around a Ford roadster. I remained there at the end of the block where I was standing. I believed he returned to the house, but I am not positive. My report reads that he returned to his house. I reported it as I saw it. I next saw this man that I was observing at about 7:40 P. M. I remained there in the interval. He came out and walked

to a pool room at 1740 Pennsylvania Avenue. I am sure that this man was Grenfell, the juror. It was dark then, but this was up in the business section about a block and a half from where he lived, and it was lighter up there. He came out of the same house, I think. I could identify when he got up to the 1700 block. I was about half a block from him. He remained there a few minutes and walked across the street to Johnson's Restaurant at 1713 Pennsylvania Avenue. He remained there about ten minutes, and then walked to the Arlington Hotel. I did not have a cab then. My report says that at about 11:45 he left the hotel in company with a young man and a young lady and they got into a cab and drove subject to his home, where subject got out and entered. I am not positive that it was Juror Grenfell who left the hotel, but I am positive that it was he who went into the hotel. My doubt is due to the distance that I was away from the car. The only way I could have absolutely seen would have been right there at the door. They drove the man to the vicinity of his home, about half a block away. He got out and walked to the middle of the block and entered the house through the basement. Sullivan gave me the number of the house. I remained in the vicinity of the house until about 1:00 A. M. I do not
423 recall whether I went to the Mayflower that night.

On Sunday the 23rd I thank the subject went to church 8 or 9 blocks from his home, around ten o'clock, and he stayed about an hour. Some other man, I believe, was with him. They roade in a Ford roadster. I do not remember who drove. I went to 15th and Pennsylvania Avenue and got a taxicab and followed them to the vicinity of the church. They were about 2 or 3 blocks ahead of me when I got the cab. As soon as I saw a man coming out of the house resembling Grenfell I ran up for the cab. I would not be positive that it was Juror Grenfell, though I reported that it was he. By the time I got back from the vicinity of the church I had picked him up in front of 1712 Pennsylvania Avenue talking with this man whom he later entered the car with.

Thereupon the witness was handed Government's Exhibit 270 which he identified as his handwritten report of October 23rd.

Thereupon the witness continued as follows:

I do not say he entered the pool room. I say he drove to 1740 Pennsylvania Avenue, which is a pool room. They stopped in front of it. There is a cigar store in front and a pool room in the rear on the ground floor. I think Grenfell went in the cigar store. In my report I say he drove to 1740 Pennsylvania Avenue, a pool room, then met a man and walked into Riggs Restaurant, 1712 Pennsylvania Avenue, remained about 30 minutes and left with a man he entered the restaurant with, in an Essex Coach, license number N-5757. Then he started down to Potomac Park. I was standing at the corner and got a cab there. I gave the driver the license number and told him to follow the car. Grenfell drove around Potomac Park and
424 watched several foot ball games. He was there about an hour and then returned to his home. The driver of the car was with him. When they got down to Potomac Park and he stopped where they were playing football. I stopped about a block back of him. He and the man with him got out of the car and walked to the side lines of a football game, where they stood and watched the game. I got aut and walked to the other side of the field. I observed him during the time he was standing there. Then they got in the car and went back to Grenfell's home. Grenfell got out and the car drove away. He stayed there about ten minutes and then walked out and got on a trolley car. I got in a taxi. I did not see the Ford Roadster. The Essex was not there then, Grenfell went and got a bus and went to Clarendon, Virginia. I did not get in the bus; I followed him all the way. He was by himself. He went to a house which I think was 26 Spruce Street. I did not see him enter this particular house, but I thought that was the house he entered. I went by the house after he entered. He stayed there about 30 minutes, and then came out and walked to the intersection or the crossing where he got off the bus. There he was picked up by some man in a Hudson Coach, J-140. A young lady got in with him. I never learned who the owner of the Hudson was. They came back to Washington and went, I think, to an apartment on 17th Street. I am sure it was Grenfell who I was following. I could not say they all went in the apartment, but I think they did. I

think they stayed there about an hour and a half. I don't recall whether they all came out together. I last saw him in the apartment 30 minutes. He was in and out 2 or 3 times. I said he remained in 921 Nineteenth Street for 3 hours and then the party came out of the apartment
425 and drove to 26 Spruce Street, Clarendon. I went to Clarendon again and returned when he did. I am not sure this was the same man I had been following all day. I did not get on the car or the cab with him. I saw him come out and get in the automobile. I usually delivered my reports to O'Reilly or Ruddy, and a couple of times to L-36, who took O'Reilly around in his car at times. I stayed at the Harrington Hotel until I discontinued on this operation. I was on the same floor with Long. I said the other day that I stood down by the school house and watched the Kidwell house. It was towards the dusk. That was when I proceeded back to the house. I lost him when he got in the automobile at his place of employment, and then I proceeded back. That was the time I had reference to. I also stood up on the corner and observed that house. There is a woods on the next street up beyond the house. O'Reilly came to my room at the Harrington once by himself and the rest of the time with Ruddy. I do not remember what night he came by himself. The night of the 22nd when I went to the Mayflower I am sure I was in bad and was called by Long about 1:00 A. M. He came to my room and we went to the Mayflower together. On October 23rd I was on Grenfell. I discontinued that night about midnight. I made my report on Monday morning and handed it to L-36, who was going to the Mayflower to pick up O'Reilly. That report is in my own handwriting and is a true report.

On the morning of October 24th I was instructed to remain at the hotel until about noon. I cannot recall what I then did.

On the morning of October 24th I was instructed to remain at the hotel until about noon. I cannot recall what I then did.

Thereupon the witness was handed Government's Exhibit 284 which he identified as his handwritten report of October 24.

426 I came to the Court House at 12:00 o'clock. I saw Grenfell at the lunch hour. I think all the op-

erators were there. I don't recall whether or not I saw O'Reilly. At 3:00 o'clock Grenfell left the court room and walked with a juror down to 9th Street. As far as I know the other operatives were there when I came back that afternoon, just before court adjourned. After Grenfell went into a cigar store at 11th and Pennsylvania Avenue he walked to the corner where he boarded a trolley car. I followed in a taxi. He got off at 18th Street and walked to 1712 Pennsylvania Avenue. At about 5:10 he left for his home. I made one other report, showing that I was instructed to discontinue and take a noon train back to Philadelphia. I made it after I returned to Philadelphia. I got those instructions on the 25th at the Harrington Hotel from Ruddy in Long's room. Long and O'Reilly were also present. Long was told he was to stay. I think we all left together. Long took me to the train. I might have talked to him before he took me. I do not remember what I said to him.

Therefore the following occurred:

Q. In that conversation that you had in Long's room, that we have just spoken of, I will ask you whether or not you heard Ruddy say that the other side has a hundred thousand dollars?

Mr. Hoover: We object to that. If anything, your Honor, it is nothing more than a casual conversation that has no reference to any instructions. We therefore, object to it on the ground that it is hearsay, a conversation between parties who are strangers to this record and cannot be evidence against any of the respondents.

Mr. Douglas: I object to it as being no evidence at all, in law, against either one of the Burns defendants.
427 There is certainly no evidence here that they embarked in any such enterprise as would be suggested by the question and answer.

Mr. Wright: I object on behalf of Mr. Day on the ground that it is settled, so far as the evidence has gone, what instructions were given to Mr. Ruddy, and if he exceeded those instructions it would have nothing to do with this issue, because they would not be binding upon anybody, Mr. Ruddy not being charged with any contempt of court.

The Court: The question approaches some others that have gone in under objection. There is a question of agency here. There is a question of whether Ruddy was speaking loosely, if he did say this at all, or whether he was undertaking to state what he believed, or had reason to believe, was a fact, that is to say, that the other side had a hundred thousand dollars to spend and Mr. Sinclair would spend two hundred thousand dollars. I think I shall overrule the objection, without prejudice to a motion to strike out hereafter. As I stated before, I think it comes within the probable range of somewhat similar questions, and there is at least the question as to how far conversations and statements made by Ruddy, during his supervision of these operatives, what he did and what he stated in that supervision, to what extent that is binding upon one or more of these respondents.

Mr. Hoover: I want to note an exception on behalf of all of the respondents to the ruling of the Court in allowing this evidence in subject to a motion to strike.

Mr. Douglas: I want to object on the same grounds on behalf of the Burns defendants.

Thereupon the following occurred:

Mr. Crim: Your Honor please, if I may be per-
428 mitted at this junction, I would like to state that in reading the record over during the week end I found that I had made objections on several occasions but that there is no exception in the record. At the particular time that I made those objections I did not except because I was under the impression that your Honor had said that when objection was made it would be noted and the exception would follow automatically.

The Court: What I said was that where a line of interrogation is taking place, to which timely objections have been interposed, and overruled and exceptions taken, I stated very particularly that counsel would not have to arise and make their objections and take their exceptions, but that it would be understood that all of such testimony would go in subject to their objection and subject to the exception.

Mr. Crim: In all of these instances the objection is upon the record, but no exception noted to the particular question.

The Court: I can say no more than what I have stated, Mr. Crim, that if it comes within that statement of the Court the exception is reserved to you.

Thereupon the witness continued as follows:

I did not hear Ruddy made such a statement.

Thereupon the following occurred:

Q. Did you ever hear him make such a statement when he was giving you instructions, at any other time or place?

Thereupon an objection was made to the question on the grounds already interposed, and the objection was overruled upon the same terms as previously stated by the Court, and an exception was duly noted.

Thereupon the witness continued as follows:

I never heard Ruddy make such a statement. Long
429 drove me to the station. I saw Klein and another man there. I had about five minutes to catch a train, and I didn't even talk to them. I saw Ruddy and O'Reilly there at the telephone booth. They got through with the conversation at the telephone booth and left before I did. I was left in the station. If Klein and O'Neill went back the same time I did I did not see them. The day I followed Kidwell to the Museum Grounds I stayed on the other side of the street at the market house, directly across from the museum. I was standing to the left of the entrance that faces the market house. I think the market house runs from 7th to 9th Streets on B Street. I was near the east corner of the market, on the same side of the street. Kidwell was over on the opposite side of the street in the park. I imagine it was a little over half way in to the left of the museum, as you face it. I do not remember which street Kidwell went down in his approach to that market, but I could go over the ground.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

Long also stayed at the Harrington while I was there. There were one or two rooms in between our rooms. Ruddy gave instructions to Long and me at the National Hotel the

day that we came down here. There were general instructions given, and each one was handed a slip of paper designating the juror he was to keep under surveillance and then instructions were given again to that particular man. Klein, Homrighausen, Kirby, Long and I were present. We were told to hold certain jurors under surveillance, and not to talk to any of the jurors, and should it become known that we were following them, to drop off immediately. Ruddy said we would be discharged if we established any contact with a juror. I am not sure whether Long
4:30 heard him say that, but he was in the room. At that time I did not know that Grenfell had a brother who looked very much like him and who lived in the same house with him, but I learned it since, before I testified on Friday. That is the reason I expressed some doubt about the correctness of my identification. It is possible that I might have had his brother instead. I didn't know of that when I made the reports and gave them to Ruddy. I had no doubt then as to the identification of this man. I testified that practically all the regular operatives were around the Court House on the 24th. O'Reilly was not a regular operative, but a contact man between the operatives and Ruddy. I discontinued my work here on the 25th. Long took me to the station. I don't know what day Long discontinued. He had his own car here. I shadowed one and a half days. In some shadow cases it is usual for the operatives to turn in their identification cards. The Agency always protects the operatives in case they get into trouble, like arrested by the police, or a fight, or something of that sort. The purpose of that is not to disclose the operation. I saw Kidwell in the Museum Park only one day, the 20th. Close shadowing means to keep not necessarily close to the subject physically, but to keep right on the job in order to prevent him being lost. I tried to stay as far away from him physically and geographically as possible. When I say a man is being subjected to the closest surveillance, I don't mean that the operative is walking locked arms with him, or with his arms around his neck, or anything of that sort, but that the operative is on the job all the time, as near as possible, so that he will know just what the subject did and what his movements were.

Thereupon the witness was further examined by Mr. Gordon as follows:

I do not recall the exact date I learned Grenfell had a brother. I was right after November 9th, after I had been before the grand jury. I don't recall from whom I learned it. It was just a general conversation with some of the Burns operatives and some newspaper men up in the Court House hall. I was not discussing testimony that I was to give before the grand jury. I can't tell who was there. It came up that Grenfell had a brother that looked very much like him, with only a few pounds difference in weight. I don't know whether I have ever seen this brother. It was after I went before the grand jury that doubt was cast in my mind as to whether I had had the right man. I was not told that the brother lived in the same house, but I surmised that. I am still employed by the Burns Agency and have been since that time. 431

Thereupon the witness was further cross-examined by Mr. Hoover as follows:

I was either in the District Attorney's office or before the grand jury every day for a week or more. While I was there there was at all times a general conversation going on among the newspaper men and the Burns detectives and also the Assistant District Attorney.

Thereupon the witness was further cross-examined by Mr. Wright as follows:

I couldn't say how many conversations I had with the District Attorney or any Assistant District Attorney on the subject of this operation. On one occasion I was in Mr. Gordon's office with Burkinshaw. In my talk with Burkinshaw we went over one or two reports. He did not go over the Kidwell incident. He went over one of the Grenfell reports, but I don't remember which one. No one else spoke to me in detail about Grenfell. When I talked with Burkinshaw only Gordon was present. 432

Thereupon the witness was further examined by Mr. Gordon as follows:

I am sure that I talked with Burkinshaw in Gordon's presence. Gordon was directing the questions. This was in Gordon's office, on just one occasion. That is the only time I ever talked to Burkinshaw or Gordon except to Burkinshaw in the grand jury room. Neither Burkinshaw nor Gordon told me that Grenfell had a brother who looked like him.

Thereupon the witness was examined by the Court as follows:

Grenfell was first pointed out to me by Sullivan outside the Court House. I am not positive that he is the man I observed from then on. I never expressed such a doubt about it to anyone. I can't say that I saw Grenfell sitting in the Jury Box. I was only in court once, and at that time I had Kidwell. I identified him when he was brought in here. I made about four written reports about Grenfell, but no oral reports. Doubt about Grenfell arose some time in November when somebody told me that Grenfell had a brother who looked like him. With that information I made no attempt to see the brother. The shadowing was all over then. But I doubted whether at all times I had followed Grenfell, especially after night. I did not shadow Grenfell at any time that I did not make a report. The shadowing was made the basis of my reports. The only description of a resemblance to the brother of the juror that I was told in this conversation was that he looked very much like the juror, and weighed within a few pounds of his weight. I arrived in Washington under instructions to come here on this operation. Somewhere in the neighborhood of 8:00 o'clock on the morning of the 19th I arrived here
433 from Baltimore in the company of Long, or McMullin, and a man named Belmont, who was sent back immediately. I met Ruddy at the station. I went to the National Hotel about 11:00 o'clock. In this 3 hour interval I went to the hotel that I was assigned to first by Robbins at Union Station. It was a small hotel on Pennsylvania Avenue that was undesirable. I didn't even go in, but waited outside. Long was with me. His hotel was few doors away. One was a colored hotel, and one was Chinese. We were to wait at the hotel that we were assigned

to, and Ruddy was to come around and give us instructions. He came for us and we went to the National Hotel, where I received my instructions from Ruddy. I did not see Kidwell until the next day. I saw him in the court room. I recognized him. From that time on as long as I continued my observation of him under my instructions, he is the man that I kept under observation. When I came in the court room I picked him out by his number and the corresponding seat number. He sat in the fifth seat in the front row. I was in the back of the room, and got a fair view of him. He is the man about whom I related the incident at the Museum Grounds. I never attempted to see Grenfell while seated in the jury box. He was pointed out to me by Sullivan somewhere in the vicinity of the Court House. I observed him thereafter going in and out of the Court House, when he arrived to resume his duties as a juror, and when he left after the adjournment of the court for the day. That continued until I was relieved of my duties.

Thereupon Mr. Grenfell stood up in the court room and was identified by the witness as being, to the best of his knowledge and belief, the man that he shadowed.

Thereupon **Arthur Joseph Sullivan** was called as a
434 witness for the United States, and being first duly sworn, was examined and testified as follows:

I am an operative for the Burns Agency, and have been so employed for four years. My home is in Philadelphia. I took part in the surveillance of the jurors in the Fall-Sinclair case. On the morning of the 19th I received instructions from Assistant Manager Welchans of the Philadelphia office to board the 11:36 train and come to Washington and report to Ruddy. My designation was S-70. I arrived in Washington at 2:30 P. M., October 19th. I made several attempts to reach Ruddy by telephone from the Union Station, and later on I met him and Robbins quite by accident in the station about 4:00 o'clock. I had no appointment to meet them there. I was instructed to check in at an uptown hotel. Ruddy told me to take my choice and I checked in at the Mayflower about 5:00 o'clock. I was in Washington a year ago, and stayed at the Raleigh. Before

going to the Mayflower Robbins and I left Ruddy and came over to the court house. It was after four and court had adjourned. I left Robbins and went directly to the Mayflower. At that time I was instructed to wait at my hotel, call Ruddy and tell him where I was located, and he would get in touch with me later. Later in the evening I got in touch with Robbins and Ruddy, and Robbins assigned me to Juror 9, Grenfell, with instructions to pick him up the next morning. He gave me a piece of paper with a description of the man on it. He did not show me a picture of him, and I have never seen one. The paper he gave me had Grenfell's description, his name, his number, what he did, and the fact that he drove a Ford Roadster. It did not tell who his father was, or what his religion was, or anything about his reputation. I first learned that
435 I was to shadow one of the jurors in the Fall-Sinclair case on meeting Ruddy and Robbins at the station. I did not see them later that night after they had given me a designation of Grenfell at my room at the Mayflower. My room number was 732. O'Reilly had not yet arrived. When he did his room was 402. I came down to the court house alone to get my pick up, and went into the court room. Someone pointed Juror Grenfell out to me.

Thereupon Mr. Grenfell stood up in the court room and was identified by the witness as Juror No. 9, the man that he was assigned to shadow.

Thereupon the witness was handed Government's Exhibit 210, which he identified as his handwritten report of October 19th, which he gave to either Robbins or Ruddy at Wardman Park the night of the 19th.

Thereupon the witness continued as follows:

I say in that report that "I was instructed by Manager C. G. R. to check in at the Mayflower Hotel." That is not correct. He told me to check in at either one of three hotels, and I chose the Mayflower. I knew Ruddy would understand the report. I was working under his instructions and he was in charge of me. I was to make my reports to him. I first saw Juror Grenfell about 11:00 o'clock on the morning of the 20th here in the court room. I stood in line for about an hour to get in. I remained in court

about 15 or 20 minutes. I am sure that I did not go out of the court house the same time Grenfell did. I went out about 5 minutes before he did and picked him up outside. I was in line about an hour and a half or two hours, waiting to get in. I followed him into the Coffee Shoppe at the noon recess and took a table 2 or 3 removed from his. I stayed there until he had finished his desert and then
436 I left and walked outside. He was alone. I kept him under close observation. He did not come in contact with anyone else at that time, and he was not shadowed by anybody else. Then he came back into the court house. I picked him up again after the afternoon session of court, as he was coming out of the court house. He went across the street with the other jurors and had a photograph taken. He then walked down D Street to 9th, entered a cigar store and bought a package of cigarettes, came out and went up 9th to F, over F to between 12th and 13th. He stopped a short while and entered a new drug store opening there, and then came out and went into an office building. He came out of the office building and went to 15th and Pennsylvania Avenue and talked to 2 or 3 cable splicers there. He later went into the man-hole and stayed a while and then came out and walked over to the Washington Hotel and boarded a street car. I walked up to the next corner and boarded it. I believe he left the street car at 19th and H and entered a confectionery store there, where he remained about an hour, when he came out and went to his home, 1926 H Street. When he went up to 9th and D and went into a cigar store and bought a package of cigarettes I was approximately a block away. To the best of my knowledge he bought cigarettes. Then he got on a street car uptown and I got on the same car. After leaving the man-hole he walked over to a platform on Pennsylvania Avenue by Child's Restaurant, and I walked across the street, approximately a block and a half away, knowing that he was going to board the street car. After I saw him board the car I ran to the next block ahead of him and when the car came up to me I boarded the same car. I did that because I had the man under surveillance. I boarded the car right in front of the Treasury at F. He stayed
437 on the car until it got to 19th and H, where he got off. I wanted to find out if anybody was approach-

ing him. If there was anyone shadowing him I would have reported it. I would have reported anything unusual that happened.

Thereupon the witness was handed Government's Exhibit 224 which he identified as his handwritten report of October 20th.

In that report I say, "Subject later walked to 14th and Pennsylvania Avenue, where he made ready to board a Rosslyn Street car. As I had been giving him a 'long spot' for the purpose of ascertaining if a second party had him under surveillance, I was so located that I could see him board his car, alone, and I then hastened to 16th Street where I boarded the car, being the only passenger to board car at this point, making it impossible for a second party to be shadowing without my knowledge. "I may be mistaken in my report about the street. I boarded the street car at the F Street stop. That is almost in front of the Hotel Washington. If that is 16th Street, that is where I got on. If it is 15th, it is 15th Street. At the time I wrote the report I may have taken it for 16th Street. I am not acquainted with the streets of Washington. There is an intersection point at 19th and H where four or five streets come in. My subject got off at one street and as he was the only passenger alighting at that time I rode to the next block, standing at the back of the car, keeping him under surveillance at all times. This was about 5:45, as he left the drug store at 6:30 after being in there for 45 minutes. The report says he boarded the car home. He was the only one that got off the car at Pennsylvania Avenue and H. I alighted at the next block and crossed the street and put the drug store under surveillance. The subject came
438 out and went directly to his home. After I arrived in Washington and Ruddy told me what the operation was, I said, "If this is an under cover operation I had better give you my credentials." I knew it was customary to give up your credentials in an operation of this kind. I gave Ruddy two wallets and my deputy sheriff badge of Delaware County, Pennsylvania. I am not a deputy sheriff and have been since a year ago last July. When I called on Ruddy alone about 7 o'clock in the evening of October 20th, I reported to him. It is customary on investigations to call

in and report on the investigation. I reported that I had seen the man. Then I kept subject's home under surveillance. At 7:30 P. M. subject came out of the house in his shirt sleeves and tinkered with a Ford Roadster. When I reported that I assumed it to be correct, but now I am satisfied that it was not he. Burkinshaw as much as told me when I was in his office about a week after I had appeared before the grand jury. He had three or four of us in his office. He was referring to the report and he said, "Was that Grenfell came out of his house?" I said, "To the best of my knowledge it was." "Now, as a matter of fact it was the neighbor, the next door neighbor that came out, Sullivan?" And I said, "That is possible, too," so I took it from what he said that that was the man. I have had no reason to make any effort to find out if it was the neighbor next door that came out. Nobody ever told me that it was Grenfell's brother that came out. The only thing that caused any doubt in my mind whether Juror Grenfell was the man I reported tinkering with the Ford car, is that one of the assistants indicated that he thought it was the man next door. I remained there until 9:50. I made my report immediately upon my return to my hotel. I delivered it on the 20th to either Robbins or Ruddy.

439 The next day, the 21st, I picked up Grenfell in the vicinity of his home. I boarded the same street car with him. He left the car at a point on Pennsylvania avenue. I left at the same point. He proceeded to the court house and I dropped him. I had instructions to give Stewart a designation on Grenfell. I did that at luncheon recess and he came out of the side door of the court house. At that time I was to pick up Juror No. 5, Kidwell. I believe I entered the court room by myself during the morning session. I had seen Kidwell's picture in one of the local papers previous to that. It was a group picture. I was satisfied that I had the right man. That was before recess. Stewart did not come in with me. Then I turned Grenfell over to Stewart. I waited outside for Kidwell until the luncheon recess, and then picked him up. I placed him under surveillance and walked to the vicinity of Center Market, where he entered the market, entered a restaurant there, I believe, and I remained in the vicinity and I lost him. I am not sure whether he entered the restaurant inside of the

market or whether it was right on the street. There was quite a commotion there at the time as the police were raiding a gambling establishment there, and there was quite a crowd collected, and I lost him temporarily. This was right at the Center Market in the building in which the market is. There are three or four lunchrooms right along there. I do not recall the name at this time. But to the best of my knowledge he entered a lunchroom. He stayed there approximately 30 minutes. I did not see him come out. I lost him for 5 or 10 minutes during this excitement, and then the next time I noticed him he had arrived at 7th Street. I followed him to the corner restaurant here at 5th and D. As he walked up through the park on the
440 southwest corner of this block I just dropped him and let him come back himself. I didn't enter the court room and I did not follow him right to the door of the court room. I just watched him approach the court. I went to lunch and came back here about 3 o'clock, entered the court house and noticed the jurors were not in the court room. I made inquiries and learned that the jurors had been dismissed at noon recess. I called at one place of business and found that Kidwell was no longer employed there. I merely called and used a pretext asking for him. I have no recollection what the pretext was. Then I went to the place he was employed. I picked him up about 5:00 or 5:30. To the best of my knowledge I did not phone this place before I went there. This place is at 80 L Street. I saw him when he left there that day between 5:00 and 6:00. He got in a Pontiac coach, and I chartered a cab and then drove a roundabout way around Washington through several streets in the direction of his home. I believe he made a couple of stops enroute. He lived on U Street. The car he was riding in did not take him near his home. At one point I lost him due to the cab driver I had. It was necessary for me to dismiss that cab and get another one and drive to the vicinity of his house. When I reached U Street the subject was leaving a Pontiac car there and he walked directly to his home.

Thereupon the witness was handed Government's Exhibit 239 which he identified as his handwritten report of October 21.

Thereupon the witness continued as follows:

I state in that report that he was later driven to 11th and U Streets where he alighted. To the best of my knowledge he walked from there to his home. When we approached there we had to stop a block or two away from him. When you are following a man you cannot pull up right back of him and stop. When you drop a cab or any-
441 thing like that it is not necessary to report it. I followed him to 11th and U. I didn't leave my car right where he was leaving his car. I dropped my cab right at the end of the bridge. I followed him to him home afoot. I remained in the vicinity of his home until about ten o'clock. After that I went back to my hotel. About 12:30 on Saturday morning, the 22nd, I was summoned by either Ruddy or Robbins. I went alone. Most of the operatives were there. I was stopping at the Raleigh. I left the Mayflower on the 20th because it was too far removed from the court house. I do not recall whether I was directed to move. I may have asked permission. The purpose of this meeting was to give additional instructions, I believe. I don't know what other instructions the other operatives had. I was notified that I was to give Klein a spot on Kidwell the next morning. It was all that I was instructed to do that I can recall offhand. It was impressed on the boys to stay away from the jurors, that is, their previous instructions were repeated. The previous instructions were to place the jurors under surveillance and to keep them at a safe distance, and under no circumstances approach a juror or talk to him. All the boys were advised at that time that to disobey those instructions would mean discharge from the agency. Ruddy agave those instructions. He did not tell who instructed him to give them. I received my instructions alone, but I knew the other boys had been so instructed, as they had told me that they had been instructed to keep a safe distance from the jurors and not to speak to any of them or come in contact with any of them.

All of them may have told me that. I know they all received the same instructions. As a matter of fact, I heard
442 them repeated that night up in the room. I do not know of any reason why they were repeated. Nothing had happened that day that would cause them to

call all the agents there to repeat those instructions. It was just Ruddy's way of handling a case. This was in O'Reilly's room at the Mayflower. O'Reilly was there. I did not give Klein a spot on Kidwell the next morning because we didn't see Kidwell. I met Klein about 6:30 a. m. at the post office and we went to the vicinity of 80 L Street to look for Kidwell. We remained there about an hour and a half. We did not see him enter. About 9 o'clock I called his place of business, using a suitable pretext. I didn't ask for anyone in particular. I had the girl repeat the names of the men present in the factory, and Kidwell's name was among them. She mentioned five names. I told her I had talked to a man several days ago relative to a trunk lock and I had forgotten his name, and I wanted to know if she would refresh my memory. She mentioned several names. I asked for all the names. To the best of my knowledge that was the first time I called the factory. I may have called the day previous, but I don't believe I did. According to my report I did, but I don't recall doing it. After I learned that he was there I gave Klein a description of him and left. I returned to the Raleigh and waited a call from Ruddy. I was assigned to another operation, to look up a man named Burr. Ruddy assigned me to that operation. I went to Wardman Park. This was the 22nd. Ruddy told me that Long had reported that Burr had made contact with one of the jurors, and apparently was connected with him in some way or other, and that he wanted to find out who Burr was, and for me to inquire as to Burr's character and so forth. I asked Ruddy for a description of him and additional information, and he referred me to O'Reilly. I went to see O'Reilly at the Mayflower and from there back to my hotel. I have
443 never seen Burr. I went to the vicinity of his home on 18th Street on several occasions. On Saturday afternoon, the 22nd, I don't recall where I went. There were three days there that I was just running around and I don't remember just where I went. I also went to look for Burr around his place of employment, Cafritz Company, at 14th and K. I went in there once or twice, but I never made inquiries for Burr in there. I called on the telephone and made inquiries. At that particular time I may have had reasons why I should not have inquired in there for

him. I am positive that I never made inquiries for Burr in Cafritz's office.

Thereupon the witness was handed Government's Exhibits 254 and 255, his two reports of October 22nd.

Thereupon the witness continued as follows:

My report says, "Subject being out of the office I entered and engaged an office girl in conversation, in hopes of getting a connection with subject." That is not correct. I explained that to Burkinshaw and so testified before the grand jury. I learned that I had erred as soon as Burkinshaw called it to my attention, because I recalled talking with the girl on the telephone. I said to Burkinshaw that when I made the report I was in error; that I did not enter the office, but I called the girl. I had been in the place twice but neither time did I make inquiries for or of Burr. I went in there just to look the place over in general. I did not ask if Burr was there. That was merely an error on my part. The report was written in haste, as were all of them. I called the home of Burr and talked to his wife. I was trying to get in touch with Burr. I asked her to have him call me. He never did so and I never saw him. On October 23rd I made efforts to get in touch with
444 with Burr. I may have called on Ruddy that morning at Wardman Park. I was being instructed from time to time. It was customary to get instructions every day. I do not recall what the instructions were. I believe I started out looking for Burr. I don't recall offhand what I did. Later, just by chance acquaintance in the Raleigh, I met a man named Gordon Simmons, of Seat Pleasant, Maryland. He had no contact with Burr, he did not know Burr, but at one time he was employed by Cafritz. I got no instructions from Ruddy relative to Simmons. I made several appointments with Simmons. I believe on the 23rd he was going to introduce me to one of the men employed at Cafritz, because I wanted to get acquainted with Burr. I do not recall where I went with him that afternoon. I went to the theatre with him on two occasions I believe I went to dinner with him that day. He was to get in touch with Burr if possible. To the best of my knowledge I stayed with him all day up till midnight. At the time of making the reports we were not under oath and

there may be errors. But to the best of my knowledge my reports are the truth.

Thereupon the witness was handed Government's Exhibit 283, his handwritten report of October 24th which recorded everything that actually happened.

Thereupon the witness continued as follows:

My instructions from Ruddy were to investigate Burr and satisfy myself as to his general character. I wanted to find out just who Burr was, what type of man he was, and so forth. I wanted to know whether or not he was capable of playing with a juror or of approaching a juror. I was to find out just what type of man he was and to satisfy myself as to his general character, and so forth. I spent the day and night with another man to get him to
445 introduce me to Burr. On October 25th I do not recall offhand what I did, I believe I had an appointment with Simmons, which he did not keep. He was to call me at the hotel. I was around the hotel all day waiting for his call. I might have gone out two or three times. On the 24th or 25th I met two salesmen who were employed by either Cafritz or some stock and bond house. I never did meet Burr. I got in touch with Ruddy later that day and he instructed me to discontinue and return to Philadelphia. My credentials were returned to me by Ruddy, I believe. The next morning, the 26th, I returned to Philadelphia alone. None of the others were down at the station when I left.

Thereupon the witness was handed Government's Exhibit 295 which he identified as his handwritten report of October 25th, the facts stated therein being true.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

Every shadowing case is under cover and necessarily so. The meeting at the Mayflower on October 22nd was not unusual but really necessary to keep the men in contact with the manager in charge when there are so many men employed on an investigation. The chief thing that is done is changing operatives from one subject to another. There were a number of changes of men from one subject to another made that night. I had a reason for not going directly to Burr and forming an acquaintance with him be-

cause I was using the pretext that I was interested in Atlantic City real estate, and inasmuch as he was a real estate salesman, had I gone to him he no doubt would have tried to make an impression on me, as I was there to offer him a position, and under pretext I was using I thought
446 it was best that I be introduced by a third party. That is my reason for going about it in that way. Simmons did not know Burr, but he knew men that were working with him at the Cafritz office. Simmons had previously been employed there. I did not mention Burr to him. I told him I was interested in Atlantic City real estate and interested in employing salesmen here in town. I never met Burr. My main work was to find out what manner of man and character of man was Burr. Long reported Burr meeting a juror. The only error in my report of the 22nd was that I did not physically enter the Cafritz office, but I got in touch with it by telephone. On two different occasions I entered the office just to size up the salesmen and employees there in general. At this particular time that I reported entering the office, I in reality called the office. In writing it out I said that I entered the office when in reality I entered the office previous to making this inquiry for Burr. I undertook to faithfully and accurately report my movements in connection with a given subject. Errors may now and then creep in, inasmuch as it is customary to make the report the next morning. It is the custom in detective offices for operatives to report to their director from time to time. There was nothing unusual or extraordinary in delivering my identification cards to the man in charge before I commenced on the operation. It has always been customary for me to give it up without its being asked for. It is the safest way to prevent anybody finding out that that work is going on.

Thereupon the witness was examined by the Court as follows:

I am still employed by the Burns Agency. When we
447 refer to an under cover man, in the phraseology of our business, we mean a man who will go out and work on an assignment and not let it be known to any one who he is or in whose employ he is. He keeps his identity unknown. A criminal investigation, a bank investigation

or any investigation at all that is worked in the open does not require one to assume the role of an under cover man. If I were out looking for a forger or a check man I would not conceal the fact that I was a detective. Those operations might extend to the so-called underworld. It would all depend on the case whether I would let it be known that I was a detective. Then a case might change during the investigation of it. In event I was looking for a man openly, and it was known that we were looking for him, I would work in the open. Occasion might arise where it would be necessary to work under cover in a particular case. I do not know in advance whether I must work under cover or in the open. I might start on a case and work in the open and when we got the case to a certain point it might be necessary to have to work under cover to get certain information. It depends entirely on the investigation. If I went out to repossess an automobile, I would probably go up to the man and display my card and yell at the top of my voice. I would tell my real name. I would have no reason to do otherwise. I had not been on an under cover investigation in Washington a year ago. I returned a man here about ten o'clock at night and he was tried the next morning and I left at noon. I was here possibly 12 or 14 hours. I had never been in Washington before that in the course of my work. I had been on several occasions prior to that, but not since being in the employ of the Burns Agency, which has been for 5 years. Previous to
448 coming with Mr. Burns I was with a broker as an investigator for about a year. I am thirty. My experience in making investigations prior to my employment by the Burns Agency was about a year in length. Four years with the Burns Agency and one year in the service of this broker. I was more or less of a confident for him, getting information and so forth. The work I do for the Burns Agency is more or less confidential. The other work was very different. My first instructions concerning Burr were received from Ruddy on the 22nd. They were that Long had reported Burr being in communication with Juror Glasscock, and that from the report of Long, Burr had acted in a suspicious manner in his approach. I was instructed to go out and conduct a character investigation of Burr, to meet him personally and find out just what type

he was, if he had loose morals, and so forth. I later talked with O'Reilly, who had previously investigated Burr's car and established the fact that Burr was the man who had talked with Juror Glasscock, and found out his home address. That is all I received from O'Reilly, just information and no further instructions.

Thereupon the witness was further cross-examined by Mr. Wright, as follows:

I said that I wanted to find out about Burr so that I would know whether he was the kind of a man that would undertake to play with a juror.

Thereupon the following occurred:

Q. And then you said you had no such instructions. Did you have any thought of undertaking to approach a juror through Burr? A. No, sir.

Mr. Gordon: I object to that.

The Court: Not what he thought.

449 Mr. Wright: Well, purpose.

Q. Did you have any purpose?

Mr. Gordon: I object to that, if the Court please.

The Court: I think that question is objectionable. What he did about the matter, or what he did not do, it may be, is proper enough. But what was running in his mind about it, what his purpose was, if he had a purpose, I do not think is material.

Mr. Wright: I reserve an exception, may it please your Honor.

Mr. Gordon: May the answer be stricken out? He made an answer to that.

The Court: Yes. He said "No."

Mr. Wright: We reserve the exception to the ruling out of the answer.

Q. Do you recall how that thought got into your mind that you expressed to the District Attorney?

Mr. Gordon: I object to that.

Q. That is to say, when you said in the direct examination that you wanted to find out whether he was the kind of a man who would play with a juror.

Mr. Gordon: I object to that.

Q. Where did you get that idea from?

Mr. Gordon: Objection.
The Court: The objection is sustained.
Mr. Wright: We reserve the exception.

Q. At the time had you any suspicion that anybody on behalf of any of these respondents——

Mr. Gordon (interposing): I object, if your Honor please.

Q. (Continuing:) —might endeavor, or was en-
450 deavoring to make contact with any juror?

The Court: The objection is sustained.
Mr. Wright: We reserve the exception.
Mr. Douglas: We reserve an exception.

Q. Had you in mind at that time that persons inimical and hostile to some of the respondents might endeavor to do that?

Mr. Gordon: I object to that.
The Court: Objection sustained.
Mr. Wright: We reserve the exception.
Mr. Douglas: Exception.

Thereupon the witness was further cross-examined by Mr. Douglas as follows:

When I was put upon the work of finding out something about the juror, neither Ruddy, nor O'Reilly, nor Sherman Burns, nor William J. Burns, nor Vietsch, nor Day, nor Clark, nor Sinclair indicated to me that this information about Burr was wanted so that they might establish an approach to this juror.

Thereupon **Barton P. Stewart**, a witness heretofore sworn on behalf of the United States, was recalled and testified further as follows:

During the noon recess I went over the ground that Mr. Gordon asked me about. On the day I followed Kidwell down to the Museum grounds I can't tell exactly whether he went down D Street or Louisiana Avenue, but he went

down to 10th Street, and then out 10th and along in front of the Museum to a path that goes across the corner. He stopped under a tree right near there. The path cuts across the corner of the lot. That is where the path starts from the pavement which is about the corner. That is in line with the museum. It is just a path that has
451 been cut across. I notice that there is a "No Trespassing" sign up there now. When Kidwell got to 10th and this park he turned to the left. Then he turned to the right on the sidewalk and went about 30 feet. He entered the park as soon as he had turned to the right off of the pavement, that is where he left the pavement, and what I call the park. He did not enter the park on B Street where 10th Street runs down to it, but he walked to the left a little further. He came down 10th Street across B. Tenth Street is just about in line with the entrance to the building. Then he turned to the left to where this path cuts across, which is about 20 feet. Then he turned to the right and went into the park about 30 or 40 feet, where he stopped and ate his lunch. There was not an iron fence between where I stood and where Kidwell sat. That iron fence is between 9th and 8th. I was across the street, directly across from the Museum. There is a whole row of market houses there. I was between 9th and 10th, about a quarter of a block from the iron fence. Kidwell was about the same distance from it. I was about a block or three-quarters of a block away from Kidwell on that occasion.

Thereupon **John Klein** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I was connected with the Burns Agency last October and had been for about 32 months. I discontinued that employment on November 22, 1927 and I am now with Broadfoot's Commercial Agency at 149 Broadway, New York City. I was assigned to duty here by the Burns Agency on the 18th of October. I got my instructions from T. A. Scanlon, manager of the New York office. He told me to proceed to Washington that night and meet Ruddy there at
452 the Union Station the next morning. I went with Dwyer and O'Neill on the train that night, and got in Washington, *and got in Washington* the next morning,

the 19th. I met Ruddy a'bout 8:30 at the station. Robbins was wtih him, and Dwyer and O'Neill were with me. I was assigned to the National Hotel, and proceeded there. About 12 or 12:30 there was a conference in my room. Ruddy, Robbins, Stewart, Long, Homrighausen, Kirby and I were there. That was the first time I met any of those gentlemen. I was told by Ruddy that I was to keep a certain juror, Miss Heaton, designated as No. 8 on a slip of paper handed to me, giving her address. He did not give me a picture of her, nor did anyone else. She was not pointed out to me. I saw her coming out of a side entrance of the court room after court adjourned that afternoon about 3 o'clock. I knew her from the description that was given in that little slip of paper. I was told there were two women on the jury, and I had seen a picture in the New York Telegram published on October 18th of the Fall-Sinclair jury, with two women jurors. I picked her up from the tan coat she wore. I was instructed by Scanlon at 6 o'clock in the evening of October 18th in New York, and in riding home I noticed the picture in the Telegram. Scanlon told me I was to proceed to Washington and get in touch with Ruddy, who would give me further instructions. Scanlon took my identification card away from me before I came to Washington. I gave him all the letters I had with my name on them. I did not have anything else that would identify me. At the National Hotel Ruddy asked me for my identification cards and I told him I had given them to Scanlon. I had nothing else on my person that would identify me. I

first saw Miss Heaton about 3 o'clock when she first
453 came out of the side entrance of the court on the 19th.

I shadowed her until she returned home about 3:30 and I did not see her again until about 7:45 that evening, when she came out of the apartment house with another young lady and they both entered a taxicab. I was unable to get a cab to follow. I wasn't around there when she came home. Thursday, October 20th, I proceeded to the vicinity of Miss Heaton's home around 8 o'clock in the morning. I saw her come out about 9:15. She immediately proceeded to court by trolley, which she took around New York Avenue or G and 13th. I got on the same car. She got off right here at the corner. She lives at 1228 Eye Street. After she entered the court I was in the vicinity

here around 12:45 when court recessed. She came out with Mrs. Bailey, another juror. They crossed the street and stopped in a shoe shine parlor right across from court, and I believe Miss Heaton had her shoes shined. Then they went to the Court House Coffee Shoppe. They came out about 1:25 and returned to court. I changed hotels that day and went to the Continental because I did not like the National. The day preceding Ruddy said he did not like the National and suggested that I change to the Continental or Capital Park. I did that right after court resumed again at 1:30. At 3:00 o'clock I returned to the vicinity of the court house, and Miss Heaton came out of the side entrance again. At that time Stewart, Long, Homrighausen, Kirby and O'Neill were also there. I did not see any others. When the jurors came out they went over to John Marshall Place and posed for a photograph. Miss Heaton then went up in the shopping district and went into various stores. I do not know the names of them as I was trusting to memory and not making notes. I last saw her about 5:00 o'clock that night. I stayed on the job in and
454 around the vicinity until about 10:00 o'clock. I did not see her any more. I did not see her either entering or leaving the house. Friday, October 21st, I proceeded to Miss Heaton's home about 8:00 o'clock. She came out about the same time she did the day before and traveled the same way as before. She got on the street car and got off at 5th and D. I got on the same car. That day court recessed about 12:45. She came out the side entrance, to the best of my recollection, with Mrs. Bailey and walked around to the front of the court house and entered it again. She remained in there a few minutes and came out again and went to the Coffee Shoppe. After coming out of there about 1:30 they walked over to E. and up E and stopped at Castleberg's Jewelry Store. They entered and talked to a bald man weighing around 200 pounds. He came to the door and they were discussing something on display in the window. I think it was an oil painting. I do not know what they said. I was not in hearing distance. I was standing on one of the safety platforms where you board and alight from street cars, so I would not be noticed, and after leaving there Miss Heaton continued on with Mrs.

Bailey up to about 13th and H Streets. I think Mrs. Bailey left her there and entered Jordan's Music Shop. Miss Heaton continued on to the Telephone Building on 13th Street, between G and H. She entered there about 2:00 o'clock, and I continued the surveillance around the building until about 5:00, and Miss Heaton came out accompanied by another girl who I have described in my report. I do not recall the description, but I remember she was about 25 years old. There was a young man apparently waiting for Miss Heaton, because she was introduced to him, or something was said. I was not near enough to hear any of the conversation. All three continued on to
455 Eye Street on 13th, where Miss Heaton left the other two and entered a confectionary store in that building. You can enter these stores in a little entrance in the building itself, which I could not see from the street. I went in to get a drink and when I got there Miss Heaton was no longer in the store. She went in about 5:15 and it was 5:45 when she walked up Eye to 14th. She turned to her left and went over to H street and stood in front of O'Donnell's Drug Store on H Street above 14th. I guess she was in there about 20 minutes when she was met by this same girl that she came out of the house with and got in the cab with the day before. They both went to Picardi's restaurant until about 6:45, when they came out. They both returned about the same way and went back in the house and I did not see her any more that day. That is all I observed of her that day. Early Saturday morning, just after midnight I went to the Mayflower after receiving a telephone call from O'Reilly requesting me to come there. I went there alone. I was instructed that I was to discontinue the surveillance of Miss Heaton. I did not make a verbal report that evening on Miss Heaton. I made no verbal reports outside of the fact that O'Reilly or Ruddy asked me if I had my subject and I said, "Yes." Then it was developed that there was no afternoon session that Friday afternoon. That is all that was said verbally. I put in my reports all that I saw and observed. I also made arrangements with Sullivan to meet him at the postoffice building on the morning. Ruddy told me to meet Sullivan to receive a designation so that I would be able to keep

Juror No. 5, Kidwell, under surveillance. On the 22nd I met Sullivan at the post office building about 6:30 A. M. We proceeded by trolley to North Capitol and L Streets, where we alighted and walked down First Street. Sullivan told me where Kidwell was employed, at "Topham's
456 Luggage" at 80 L Street. About 8 o'clock a car approached the building and Sullivan said that that was the car that Kidwell generally came to work in or left in. The license was U-1949, and it was a Pontiac. Kidwell was not in the car then. I saw Kidwell that afternoon about one o'clock, coming out of 80 L Street. He entered the car. I proceeded on L Street, went under a railroad bridge about two blocks, then down a sharp decline and I lost sight of it. I stated in my report that I lost the subject in traffic about that time. I had a taxicab that I had retained at 11 or 11:30 because it was a vicinity with few cabs. I lost the car past that bridge. I don't know whether it turned right or left. It was in the northeast. I got Robbins on the phone and told him I had lost the subject and he said, "Proceed to the vicinity of the home and see if you cannot get him there either entering or leaving the house." I had been furnished his address, 1637 U Street, S. E. I went there and stayed there until about 10:30 or 11. I was where I would observe the house and could see whether Kidwell came out or went in. Sometimes when I remained on the corner I couldn't see the house, but I was walking up and down. I was there to see whether Kidwell went in or came out. I did not see him enter the house that evening or come out of it. I could have seen him had he done so. I didn't stand in any one spot long, as I did not want to be noticed. I kept walking up and down between Fendall Road and 16th Street. I was never more than 150 or 200 feet away from the house. In the evening I kept nearer. I kept the house in view. I would have noticed Kidwell on the street as I knew when he looked like. I was on both sides of the street. Fendall Road isn't more than 40 or 50 feet from Kidwell's home. At times I walked down to 15th Street, two blocks away. I
457 walked down there because I didn't want to be noticed in the same block all the time. From that point I couldn't see the house, but if from there I saw Kidwell

walking down the street I would assume that he came out of his house. I was in the vicinity of the house. I didn't see all the time who went in the house. It was my mission to see whether anybody went in or out and who Kidwell connected with. I stayed there until 11 or 11:30, and then discontinued for the evening. On Sunday morning, the 23rd, I proceeded to Kidwell's home about 8 a. m. I saw him about 9:05 coming out of his yard. He walked down U Street to 13th, and turned one block left. I was on that corner. As he turned the corner, when I got up there, I saw him approaching a church. There were a lot of people around there, and I presumed then that he had gone into the church. I stated in my report that he went to the church. He approached it and went up the steps, and then I turned and walked off. He was out of my sight in the church about an hour. I stayed there in the vicinity. It was about 10:15 when I observed him walking up U Street toward his home. I didn't see him come out of the church. I was on the other corner. If he did come out I assumed that he would go back to his home. I don't know the name of that church. I didn't even look at it. There are several churches on V street. I was shadowing this man. It was the church on the right corner. I don't know whether it was a Catholic Church or what it was. I think it had a cross on it. That was where the crowd was. There are several churches on that block. There is one on the corner and one in the middle of the block between 13th and 14th. He went toward the church on the corner of 13th and V. It is a red brick. I didn't go back to the house. I observed him coming up 16th Street about 10:15 with a text-book under his
458 arm. While he was in the church I was in the vicinity. I was standing around. I was out of sight of the church when I saw him walking up 16th Street. I was then on U Street about 14th. I walked away from the church and walked two blocks off. I didn't want to be too conspicuous standing there while everybody else went in the church. I always walk around. I walked around for an hour or so in the vicinity. I passed the church and turned around the corner and came back again. When I saw him again I shadowed him up to his home. I watched his home that day until 11 or 11:30 p. m. I didn't go out of the vicinity. I didn't see Kidwell any more that day after

he went in his house about 10:15 p. m. I saw Kidwell the next day, the 24th, at 12:45 at court recess. I went to work at that time. Ruddy instructed me to start then. Kidwell came out and walked over to Louisiana Avenue, and down it to 7th Street. He crossed Pennsylvania Avenue and went in a public comfort station at 7th and Pennsylvania Avenue. After coming out he walked over towards Center Market and up to 9th Street. He walked on the sidewalk. When he got up to 9th Street he turned south, to his left, over to B Street. Then he walked into a park about 25 or 30 feet and stopped by a tree. As he did I continued on straight along what would be a continuation of 9th Street, through the park up to where there were several buildings. I remained in that vicinity observing him as he crouched against the tree. He remained there for a few seconds and took something out of his pocket and began munching. I judge he was eating his lunch. He entered the park at 9th and B. He went through the one block to the park at the Market, after walking up the street from 7th Street, from 7th Street he walked two blocks up and then turned to the left one block and went to B. Then he crossed
459 the street at 9th and B and entered the park right there. I should judge this tree was about 25 or 30 feet from the sidewalk, the far side of B Street. It was a very large tree and immediately in front of 9th Street. I had continued on what would be 9th Street, past the tree. It was a little to the right, the west of 9th Street, about 30 or 40 feet in the park at an angle.

Thereupon the witness drew a diagram of the park and its neighboring streets.

Thereupon the witness continued as follows:

The street south of the market is B. There were not many people in the park at that hour. I could observe him when he moved. Kidwell went down 9th to B, and then crossed over B Street, and then turned to the right and entered the park. The tree is about 30 feet from the southwest corner, and about 35 or 40 feet south of the sidewalk. I did not notice whether there was a fence along the sidewalk on B Street. I continued to a point about half a block away from 9th and B, south on the continuance of 9th

Street. I went in the p. k. I observed him all the time he was there and I saw him when he left. I brought him back here about 1:20 and he stopped out in front of the court house here. While he was in the park I did not observe anybody approach him. Nobody approached him or spoke to him at any time while I had him under surveillance. I did not approach him. I never spoke to him. Kidwell was in the park between 9th and 10th Streets.

Thereupon the diagram made by the witness was marked "Government's Exhibit No. 317" and received in evidence.

Thereupon the witness continued as follows:

Kidwell remained under that tree about 20 minutes. When he came out he went up to 10th Street and
460 turned to his right and went up Pennsylvania Avenue to Louisiana Avenue, and then up to the court house. That was about 1:25. At the corner of the court house building he spoke to a man whom I described in my report as being about 55, with a gray hat, a gray overcoat, and gray hair. I do not know who it was. I do not know Juror Holt by sight. Then Kidwell entered the court house. I left the vicinity and resumed again at 3 o'clock. Kidwell came out and walked along 5th Street over to G, where he waited for a car. He boarded a Brookland car and I got on it also. He went to Topham's again about 3:25. I saw him enter. I remained there until he came out again at 5 o'clock. He got in the same Pontiac car and went to 11th and H, N. W. where he boarded an Anacostia car. I got on the same car. He got off at Nichols Avenue and U Street and walked to his home, 1637 U Street. I remained in the vicinity until about 11:30 that night. I was walking up and down the block, and was not in front of the house. I walked in front of the house on the same side of the street. I would walk up the Fendall Lane and then down and cross over at 16th Street.

Thereupon the witness was handed Government's Exhibits 195, 205, 218, 232, 244, 263, 277 and 290, which he identified as his handwritten reports for October 18 to 25, inclusive, all of which correctly state the facts.

On the 25th I returned to New York City. The following day I went to the New York office of the Burns Agency and reported on my return. I did not make a verbal report. It was written and turned in to the chief clerk.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

461 I did not come in contact with Sherman Burns before I left New York to come to Washington. I got my orders from Scanlon. He told me that I was to proceed to Washington that night and there meet Ruddy, and that I was going down there with some of the other boys to place under surveillance the jurors in the Fall-Sinclair case. He told me that he was told by Sherman Burns that we were not to approach or attempt to talk to any of the jurors that we would have under surveillance. On two occasions Ruddy instructed the men, first upon arriving and then on that Saturday morning at O'Reilly's room.

Thereupon **Daniel E. Merritt** was called as a witness for the United States, and being first duly sworn, was examined and testified as follows:

I am employed by the Burns Agency as an operative at the New York office and have been for 14 years. On October 19, about 2 p. m. Sherman Burns told me to pack my bag and get ready to go to Washington to work on a case under Ruddy's directions. He told me not to talk to any of the subjects in the matter, and to be very careful. I don't remember whether he mentioned the case or not. Those were all my instructions in New York. The subjects in a case are the people we keep under surveillance. I arrived in Washington about 9 p. m. the 19th and met Ruddy and Robbins at the station. I went to the Washington Hotel, registered and retired. The 20th I came down to Court. I stood in the hall outside the door and every time the door opened I looked at the man in the jury box I was to shadow. Nobody pointed him out to me. At the station Ruddy gave me a slip of paper with a man's name and address and description on it and said that would be my subject. He told me to be very careful and not

let the man see me shadow him, and under no circumstances
to connect with him. Goucher, No. 10 was the man.
462 I was told he was a juror in the Fall-Sinclair case.
I have seen Goucher when he stood up on several occasions. He is the man I was to shadow. I did not have a picture of him. I later cut a picture out of the newspapers. M-20 was my designation. No one else was assigned to Goucher on the 20th to assist me. I don't think I talked with O'Reilly about Goucher that day. As a rule, when my day's work was finished I either reported to or called up Ruddy. On the 21st I went to the vicinity of Goucher's home, 1408 Franklin Street, Northeast. It was impossible for me to cover the house, so I stood a block away until 9:40 a. m. and not seeing the subject, I returned to the hotel. I met O'Reilly later and received instructions to turn my man over to O'Neill and take up Kern. No one else was covering Gouchern when he was assigned to me. I so reported. Kern is the man who stood up here yesterday, No. 1. I followed him the best I could. I was handicapped with automobiles. That afternoon I went out to the vicinity of Kern's home, 1315 North Carolina Avenue. I stayed there until about 9:30. To the best of my knowledge there was no one else shadowing Kern when I had him under surveillance. I so reported. I have been shadowing about 13½ years. Ruddy told me to change from Goucher to Kern. On the 22nd I got over to the vicinity of 1315 North Carolina Avenue about 7:30 a. m. About 8:30 I noticed my subject stepping out of a Hudson car and going into his home. That morning about 1:15 I went to the Mayflower upon receiving a call at my room at the Washington. I stayed there 30 or 35 minutes. About 8:30 Kern got out of a Hudson car and went in his home. An hour later he came out and went to a hardware store nearby. He returned to his home and a man called in a Lincoln car,
Q 7877. He got in the Lincoln. I couldn't get a
463 taxi, so I went to Holmes Bakery, where he worked.
The Lincoln was parked there. I then called up Steer and Dwyer and told them to join me, which they did. I remained over there and every time I saw the subject I noted it. He used a Chevrolet car. There were no taxis available. About 8 or 8:30 that night a man got in the Chevrolet and drove away. In a few minutes I got a taxi

and proceeded to the vicinity of Kern's house with Steer and Dwyer. About 9:15 a Hudson drove up and the subject, an old man and two other men got out and went in the house. They stayed about 15 minutes and came out and got in the car with the subject. About 11 o'clock we all left there and went to the Mayflower and talked to O'Reilly about the situation. On the 23rd I left my room about 8:30 and went over to the park near Kern's residence and met Dwyer. We remained in the vicinity and didn't see the subject until 1:30, at which time I saw him on the porch. At this time I saw the car parked in front of the house. It is possible he drove up and went in without being seen. About 3 o'clock he came out with a little girl and they went to a moving picture at 13th and C streets. About 4:20 the Hudson drove up to the theatre. A woman was driving. The subject came out of the theatre about 5 o'clock with the little girl and got in the auto and drove away. We got a taxi and drove to within a block of the subject's house and saw the Hudson parked outside. In a few minutes the subject came out and got into the car and drove away. Our taxi was unsuccessful in holding it. We dismissed the cab and held the house. After 8 o'clock a policeman went up and rang the bell. No one replied. He came down and went to Lamb's Drug Store. We followed him for the purpose of identification. We returned to the house and found a light in subject's apartment, signifying he had re-
464 turned. After the house was in darkness a short while we discontinued. I didn't see anybody trying to shadow him that day and I so reported. On the 24th I took up the surveillance about noontime. I came to the court house and saw Dwyer. Kern came out some time between 12 and 1 o'clock. He talked to four men on D Street, one of whom I recognized as having seen him before. They talked a while and then walked away. I gave Kern what we call a long lead, and at 6th and D I lost sight of him. I remained in the block for a while, walked by the subject and resumed surveillance. He returned to the court house. He came out about 3 o'clock with another juror and walked to 3rd and D, where he got into an automobile. I had no taxi and again lost him. Dwyer was with me all this time. We went to the bakery and stayed until about 6 o'clock, and then went to the vicinity of his home. If I remember

correctly some people came out of the house that night. I reported a man coming out with a searchlight, finding his way down the steps, and then going into an automobile. About 7:50 the subject came out, got in the Hudson and drove away. He returned on foot in about 15 minutes. Dwyer and I held the house under surveillance about 15 minutes after that. We then called O'Reilly and paid him a social visit at the Mayflower. I checked out of the Washington Hotel on the 24th and moved in the Commodore Hotel, which is near the station. On the 25th I stayed at the hotel until 2:30 or 3 o'clock, when Ruddy came there and requested me to take up another subject. He told me to move to Wardman Park, which I did. About 9 p. m. I received orders to shadow Juror Kidwell, No 5. He has stood up in court and I have identified him. My instructions relative to Juror Kidwell were to receive a description of him and go to his house in order to be con-
465 nected with the man of whom the description was given me, and it was said this man was his brother. I left Wardman Park about 9 o'clock. I took a cab to the 1400 block on U Street, S. E., and went to the 1600 block, and walked up and down the opposite side of the street. About 10:20 a man answering the description given me went into 1637 U Street. I referred to this man as the Barber, because he answered the description that was given me. About 11 o'clock, while walking up and down, I noticed a man in an automobile. If I walked to one end of the street, he would ride up; if I walked to the other end, he would ride down. I did that once or twice and finally thought I would get out of the neighborhood. I walked to 14th Street. This man followed. He got out and talked to Sergeant Dent. After he left I went to the Sergeant and asked him what was wrong. We had a talk. He ended by saying "We generally pick up strangers on the street out here after 11:30 p. m.," and he used the phone box. When he finished I asked him if he was through with me and he said he was. I walked to the car line and got a car. He followed the car for a short distance. I went back to Wardman Park and reported to Ruddy. I did not tell the sergeant I was a Burns' agent. He asked me what I was doing. I told him waiting for a man. I didn't tell him who the man was. On the 26th I reported to Ruddy and

came down to court in the afternoon. Kidwell went in court about 1:15. I stood across the street where I could cover the side door of the court house. I was in court once, just to listen. I worked alone on everyone except Kern. Long was the only other operative down here that noon. Kidwell came out at 3. I lost him and went to Kneesi Luggage Shop, where Ruddy told me he was working. I stayed there till 6 and not seeing him went to the vicinity of
466 his home. I stayed about 15 minutes and returned to Wardman Park. Ruddy instructed me to meet O'Reilly. We left about 8:15 in an automobile for the Congressional Club. We went out Wisconsin Avenue to Bradley Lane and out to the club. I got out and looked around the grounds for an Oakland Roadster. I did not find it and we came back down town. About 11 we spotted it about four blocks from the Department of Justice. It went to the Department of Justice, where two women got in. We held it under surveillance. The first stop was the Ward Apartments 3rd and S, N. E. where one of the ladies alighted. The next stop was the Faraday Apartment, where the other lady alighted. On both occasions I got out of our car and ran down to get the number of the house. The Oakland then drove back to 16th and P, and in an alley. We waited on the corner for the driver to come out. He came out another alley and entered 1989 16th Street. We discontinued and reported to Ruddy. The 27th I reported to Ruddy and then came down to court. Kidwell came out at 3 and walked to 5th and G and waited for a trolley. I went into a restaurant. He got on a Brookland car and I got on. Three or four other people got on. He got off at North Capitol and L and went to Topham's at 80 L Street. I held the place under surveillance until 7:15, but did not see him leave. I returned to Wardman Park. On the 28th Ruddy assigned me to Juror Glasscock. He is in court now. I purchased a camera, met Long, and we took up the surveillance at the court house. Subject came out about 3, walked to 3rd Street, got in his car and drove away. He got home about 5:30, after making two stops. On the 29th there was no court. Long met me at my hotel and we went

to the vicinity of Glasscock's place of business, after first going to his home and seeing his car gone. I phoned
467 Ruddy and requested another chauffeur. Long was sent to Philadelphia and O'Reilly assigned to me. Subject left his place of work about 4 and drove home. He came out about 7 and spent 50 minutes in line at a gas station. He returned home about 8. Up to midnight we did not see him again, so we discontinued. On the 30th O'Reilly and I went to vicinity of Glasscock's home about 11 a. m. His car was parked in the same place. He came out and polished it. He came out again about 2 with a woman and child and drove to a house in Silver Springs. He left there about 5 and returned home. About 9 he came out and went to a confectionery store and then returned home. I returned to Wardman Park. I remained in Washington all through the grand jury investigation.

Thereupon witness was handed government's Exhibits 207, 221, 235, 266, 280, 292, 300, 306, 188, 184, 165 which he identified as his handwritten reports from October 19th to 30th, inclusive, which contain true statements of his activities.

Thereupon the witness was cross examined by Mr. Douglas as follows:

I did not recognize the man in the car that followed me the night I came in contact with the Sergeant. It was not Juror Kidwell or Barber Kidwell. I purchased a camera on the 28th, day Long and I had Glasscock under surveillance. The camera was to be used on this operation. I suggested to Ruddy that it would be a good idea to have a camera to take pictures if the subject connected with anyone. It was never used for that purpose.

Thereupon the witness was cross examined by Mr. Crim as follows:

I purchased that camera at a sporting goods store on 9th Street. I gave it to Ruddy. The only time it was used was when Glasscock was at Silver Springs, when O'Reilly and I took pictures of each other to allay suspicion.
468 I remained here until the 14th or 15th of November. I was here under subpoena.

Thereupon the witness was examined by the Court as follows:

To the best of my knowledge I handed back the paper that was given me when I first got my instructions. It had the man's name, number, address and description on it. All Burns' operatives have an operating number. I have not always had the same number. I was given my present number, M-20, about a month before this operation. I do not know how these numbers are given. My first assignment was Glasscock. On the 21st I was assigned to Kern. I commenced that day at noon. I made a report that day. I refer in it to the foreman of the jury. I was misinformed by Ruddy as to that. On the 21st my instructions were to place Kern under surveillance, note who he met, where he went, and the same general instructions not to connect with him or interfere with him, and if he saw me, to discontinue immediately. On the 22nd I got further instructions from Ruddy in O'Reilly's room relative to Kern. Ruddy wanted a brother of Kern's, a baker, placed under surveillance, I had no description of him. Ruddy told me to take Dwyer and Steer with me and if a man talked to the subject whom I thought might be his brother, to place him under surveillance. They were to drop him if later they thought he was not Kern's brother. On the 22nd Kern left his home in a Lincoln car. I thought the man in that car might be his brother, but I learned otherwise. I had no knowledge that this man was the brother. I simply took the precaution. I never got a designation of the brother. By the expression "getting a flash," I mean getting a very meagre look at something. I don't know whether I received instructions to hold the subjects as closely as possible, but being a surveillance man I naturally would hold them as close as possible without getting them suspicious of my presence. My work for the last 14 years has been
402 largely surveillance work. I did not see Ruddy today.

Thereupon Edward J. Kidwell, was called as a witness on behalf of the United States, and being first duly sworn, testified as follows:

I live at 1637 You Street, S. E. in the District of Columbia, Anacostia, and did, from October 18th to November 2, 1927, throughout the trial of the case of United States against Harry Sinclair and Fall; in which I was a petit juror. I am employed at Topham's, Incorporated, 80 L Street, N. E. in Washington. I know a man named Raines, first name Charles. Charles Renick is employed at Topham's. I know Edward L. Knecsi, who lives on Connecticut Avenue. I don't know the number, and has a place of business at 409 7th Street, N. W. in Washington. I have from time to time done work at his place.

My sister, age 26 lived there too, at that time. I was in court the other day when Burns' Detective O'Reilly was on the witness stand. Mrs. Bailey and Miss Heaton were fellow-jurors. (The witness identified them in the court.) On an occasion during the Sinclair trial I came into a room where those two jurors were during the noon recess

Thereupon the three men named were identified in court by the witness.

I was at Knecsi's place Saturday afternoon, October 29th, while a trial juror.

Thereupon the witness identified the lady in the court room as his mother Mary Pearl Kidwell living at 1637 You Street, S. E.

and there was a conversation between me and one or the other of them. I know Randall Kidwell, who is no relation to me. (The witness identified him.) He lives at Giesboro Point, D. C. near the Steel & Awning Company.

I know a man named Sykes. I know Daniel P.
470 Dogherty. (The witness identified him.) He is employed in Maurice Horan's near beer saloon, 411 4½ Street, S. W. (The witness identified Maurice Horan.) I know Miss Ruth Teates, who lives at 1642 You Street, S. E. across the street at an angle from 1637 You Street. I know a man named Norton, but I do not know the Mr. Norton now standing in the courtroom. The Norton whom I know was employed by the Fred Drew Construction Company at Walter Reed Hospital. I know Sergeant Bobo and Lieutenant Holmes of the Police Department. (The wit-

ness identified them.) I was in court when Justice Siddons gave directions to the jurors not to talk to anyone during the trial, and not to permit anyone to talk to them. I know H. F. Sinclair by sight. He was in the courtroom when those instructions were given. On different occasions during the trial those instructions were repeated. (Thereupon Burns' Detective Klein was called into the courtroom.) On Sunday afternoon either the 23rd or 30th of October, 1927, during the trial when I was a juror, about 3 or 4 o'clock P. M. that Mr. Klein and I were about a foot apart, right in the doorway between the street and the room of Horan's place, 411 4½ Street, S. W. (Thereupon the witness identified Burns' Detective Merritt.) While I was a juror I saw that man at the corner of 5th & G Street, N. W. I am not sure of the date. About 3.15 or 3.30 P. M., I was waiting for a street car. When it came I got on, he got on the same car, the car went away with both of us on. I think it was the second week of the trial, I do not know the day. I was in the courtroom when Burns' men Stewart and Klein testified about the Museum Grounds and heard their testimony. I was in the Museum Grounds while serving as a juror pretty nearly every day of the week except when it rained; I did not see any other man sit or crouch near a tree. I often did it myself. I recall an in-
471 cident while I was a juror when I was sitting on a bench in the Museum Grounds, a man came up and went behind a tree and sat on the ground for a while; he was sitting right under the tree about 10 or 15 feet from the bench, as follows.

Thereupon this line of examination was objected to and the objection overruled and an exception duly noted.

Thereupon, the witness continued:

It was the latter part of the week, Thursday or Friday. This happened during the noon recess. I went from this courtroom down there and from there back here. This photograph correctly represents the physical objects I saw in the Museum Grounds on that day.

Thereupon photograph marked Government Exhibit 318 was offered in evidence and is hereto attached.

Photograph marked Government Exhibit 319, Government Exhibit 320 and Government Exhibit 321 correctly depict some things I saw on that day.

Whereupon said exhibits were severally offered in evidence to which several offers the respondents severally objected. The objections were overruled to which the respondents severally excepted. The exhibits are hereto attached.

The sketch marked Government Exhibit 322 represents the relative positions of the objects described in my testimony with regard to the incident that occurrred on the Museum Grounds, the bench, the tree, the waste paper basket, the paths.

Whereupon the sketch was offered in evidence to which the respondents objected. The court overruled the objection to which ruling the respondents severally excepted. The sketch is hereto attached.

Thereupon the witness continued:

Those objects I mentioned seem to me to be in the same position in the picture as they were on the day I was in the park. On that particular day I went down Louisiana
472 Avenue to 7th Street, down 7th Street to B Street and into the park from B Street at 7th & B; I walked down the path going into the park from the 7th Street side to a bench in the park, I sat on the bench and ate my lunch. At no time that day did I sit or crouch on the ground near a tree. I sat on the bench 15 or 20 minutes, then I came back to court. During that 15 minutes a man approached me from the 9th Street entrance to the park.

Thereupon the following occurred:

Question by Mr. O'Leary: "To the best of your recollection will you describe that man to the court."

Mr. Hoover: We object to that may it please your Honor unless it is to be shown that it was some agent or some of the agents which were employed by the Burns Agency because it would be immaterial as to what anyone else did." The court overruled the objection to which ruling the respondents severally excepted.

Thereupon the witness continued as follows:

I do not remember exactly how the man looked. To the best of my memory he was a man about my height with dark hair and rather dark clothes. I did not pay particular attention to him at the time. He wore a hat.

Mr. Hoover: May it please the Court I want my objection to apply to this whole line of examination. I do not want to be put to the necessity of repeating the objection to each question. May it be understood your Honor that my objection applies to this entire line of examination with the necessity of my repeating the objection to each individual question.

The Court: It may be so understood. As I said a moment since in ruling on the objection the relevancy and materiality, of course, must appear here.

473 Mr. Hoover: That is the point I am making that it does not appear and therefore I object.

The Court: Let the witness go on with the subject and it will go in subject to your objection and exception.

Mr. Douglas: Subject to the exception of all the respondents?

The Court: Yes, that is all right.

Thereupon the witness continued as follows:

I think he had a top coat, I am not sure. The man walked down the path from the 9th Street entrance until he got I would say within 25 feet of the bench on which I was sitting, then turned from the bench and went and sat under a tree directly in back of this bench; before he went back to the tree he stopped there, he just looked at me on the bench; there was no one else in sight that I could see any closer than B Street at the Market. He went directly from the path to the bench in back of me, the bench was 10 or 15 feet from the tree. I had a lunch prepared by my mother which I ate, and after that I was smoking a pipe; the man got out from under the tree and came over and sat on the bench beside me.

Thereupon the following occurred:

Question by Mr. O'Leary: On that occasion was a tobacco pouch exhibited by either you or that man? A. Yes, sir.

Mr. Hoover: He has gone through what appears to be his efforts as identified of someone. Now he proposes to interrogate the witness as to what happened between him and that man and we object again that there is no evidence in this case that shows that this man was in any wise connected with the Burns' Agency or with any of these respondents, that further that anything that may have been said or done is utterly immaterial and irrelevant
474 in this case we make our objection on that ground. I move to rule out his answer.

Mr. Wright: Do you expect to tell the Court that it was either Klein or Stewart?

Mr. O'Leary: I am telling the Court that I think the circumstances of the case already establish that. If the Judge means by the question: Do I expect to produce eye-witnesses to come here after Kidwell and say, "Yes, the man that was there was Klein," or "the man that was there was Stewart," I say no.

Mr. Wright: Well, I do not ask you that. I ask you as an official and as an officer of this court: Do you claim and believe and are you undertaking to prove that it was either Klein or Stewart? That is what I asked you.

Mr. O'Leary: I claim nothing.

Mr. Wright: Again I submit, if your Honor please, that we should not be subjected to any variance from the rule which requires that the relevancy of evidence be made to appear before it is heard against us, and that on such a statement as that it is perfectly manifest that a situation does not now exist which justifies the exception to the rule, which requires the identification of evidence as relevant to the issue before the tribunal shall hear it. The court overruled the objection to which ruling the defendants severally excepted.

Thereupon the following occurred:

Question by Mr. O'Leary: On the occasion when you were sitting on the bench and the man was behind you as you

had finished eating your lunch you testified that you had then commenced to smoke. Did you? A. Yes.

Question by Mr. O'Leary: Did you on that oc-
475 casion have a pouch with tobacco in? A. Yes.

Q. Is this the pouch? A. Yes.

Q. Now tell the court what occurred from the time that you produced that pouch.

The foregoing objection was renewed by the respondents, was overruled, and the respondents severally excepted. The witness answered:

The man came directly from under the tree and sat beside me on the bench and asked me did I have a cigarette, and I told him no I didn't, have a cigarette. He asked me did I have the makings. So I told him I had tobacco, and I handed him a pouch of tobacco. He asked me what kind of tobacco I smoked. I told him it was Prince Albert. And he rolled a cigarette from the tobacco which I gave him, and handed me the pouch back and thanked me for it. He then said "It is nice weather we are having for this time of year." I told him that it was and he never said any more to me nor I never said any more to him. I stayed there for about ten minutes, and then I got up and left him sitting on the bench. I have told all that was said.

Thereupon the witness identified the tobacco pouch which was offered and received in evidence.

Thereupon the defendants moved to strike out all of the testimony of the witness with regard to the man going to the tree and going to the bench and the conversation had between this unidentified man and the witness, and anything that occurred between them with reference to the tobacco pouch. Which motion the court overruled to which ruling the defendants then and there excepted.

Thereupon the witness identified a photograph
476 marked Government Exhibit 324 as correctly depicting his home at 1637 U Street, S. E., marking the same with an arrow to identify that house. That Exhibit was then offered and received in evidence. It is hereto attached and made part hereof.

Whereupon the witness identified photographs marked respectively Government Exhibit 325 and Government Ex-

hibit 326 as correctly representing the scenes they depicted. And said photographs were offered in evidence for the purpose of contradicting Government witness Klein. To which offer the respondents objected, the court overruled the objection to which ruling the respondents severally excepted. Said photographs were received in evidence are hereto attached and made part hereof.

Thereupon the witness identified photograph marked Government Exhibit 331A and 332A as correctly representing the objects shown about the west door of the courthouse and which photographs were received in evidence.

Thereupon the witness continued as follows:

Sometimes during the trial of the Fall-Sinclair case when I would be passing through the courthouse grounds I would see respondent Harry F. Sinclair. I often saw him go up the front steps to the courthouse. I saw him come in his automobile to the west door and go up the steps of the courthouse. I have seen him in front on the steps to the court. I never saw him sitting on a bench in the courthouse grounds. I have seen him sitting on the edge of the fountain, at the noon recess, I would say I saw him three or four times at the noon recess on the courthouse grounds. I do not remember seeing either Ruddy, O'Reilly, Klein or Stewart at any time during the trial of Fall and Sinclair. I don't remember seeing any of those men around the courthouse grounds or in the courthouse while I was
477 a juror. I don't remember ever seeing Merritt in the courtroom. I don't remember seeing him ever except that one time at the corner of 5th & G. I never saw Brennan, Homrighausen or Kirby or Knowles or Steers or Dwyer or O'Neil or Robbins during the trial of the Fall-Sinclair case. I think the first time I saw Mr. Sinclair during the jury trial he was getting out of an automobile at the west door of the courthouse. That door is probably 75 or 50 feet where a man whom I have never seen since and do not know spoke to me about the case.

Thereupon Government Exhibit 333A was thereupon offered in evidence, and the witness continued:

I did not put any of the marks, "X. E. J. K. Jr." on there. I now put a mark on 333A showing the spot where

the man approached me. The automobile shown is not where the automobile was that Mr. Sinclair alighted from. I put a Z on 331 marking that place. Several people were with him on that occasion but neither Day nor W. J. Burns nor Clark nor Sherman Burns were amongst them. Neither was Vietsch. Some ladies were amongst them. I do not know who any of the party were except Sinclair. I think I was coming up the steps at the time. There were others with Mr. Sinclair all the times that I saw him about the courthouse grounds. The only one I knew by name was his counsel, Mr. Littleton. On occasions of going in and out of the courthouse I never saw any of the Burns Agents that I know of; if they were there I didn't know who they were; I never at any time during the jury trial saw men whom I now know are Burns Agents; Thereupon McMullen was asked to stand up). I never saw McMullen during that trial that I know of. The man who approached me in the Museum Grounds was not a shabbily dressed man; he was not overly well dressed either. He was an average man. I do not recall the date of that occurrence. At the time I was a juror there was at the place of my employment
478 one door on the L Street side leading into the office upstairs. There was a time clock and we had to check in and out by that clock. On the Pierce Street side there are two doors that are only used for shipping purposes. We never use those doors in the morning to go to work or to go out in the evening. We never went in or out either one of those doors. I do not know where Rocks Restaurant is.

Thereupon the following occurred:

Question by Mr. O'Leary: During the time that you were a juror in the Fall-Sinclair case, did you know about a restaurant called Rocks Restaurant? To which the respondents objected, the objection was overruled, and the Respondents severally excepted.

The Court: My recollection is that there is in evidence in one of the reports made by one of these operatives a distinct reference to a restaurant by that name with reference to the witness upon the stand.

Mr. O'Leary: As I remember it, he said he took his lunch there.

Mr. Wright: We are not engaged in a controversy as to whether or not these reports are true.

The Court: I think the question is relevant and the objection may be overruled.

To which ruling the respondents severally excepted and the witness answered,

"No, I do not know where there is any lunch room by that name; I never went in any lunchroom during the whole time of the trial, I always brought my lunch with me, it was prepared by my mother. I did not go inside of any Church on any Sunday during the jury trial."

Mr. Wright: I want to renew my objection and to reserve an exception to Your Honor's ruling to each
479 of these questions with regard to statements contradictory to what is contained in the reports.

In which objections and exceptions the other respondents at the time joined.

Thereupon the following occurred:

Question by Mr. O'Leary: On Sunday, October 23rd, were you in a Catholic Church? Answer: No, the Catholic Church is on V Street and I came up U Street. I very seldom go on V Street unless I have some particular reason. On the occasion that I observed Merritt at the corner of Fifth & G Street I got on a Brookland car, some other people got on directly behind me, he got on the same car behind these other people. I do not know whether I noticed him get off the car at Twelfth or not or whether he might have got off at some other street. I didn't pay particular attention to him after he got on the car. I did not know who Merritt was at that time, I didn't know at the time that his name was Merritt. I do not know the name of the man who approached me in the Museum grounds on the occasion I have testified about. I have seen the witness, Stewart, in this current trial. I was in the Court room one day when Stewart was on the witness stand in this contempt trial, and recall observing him, looking at him while he testified.

Question by Mr. O'Leary: Do you recall at the time you observed him and looked at him that you then recognized him to the best of your recollection as the man that had

approached you and spoke to you at the Museum grounds? Answer: No. I never said that I recognized Mr. Stewart.

Question by Mr. O'Leary: On the 16th day of December, 1927, did you not, after seeing the witness Stewart being questioned by Major Gordon on the witness stand in this contempt case, then to the best of your recollection
480 identify Stewart as the same man that approached you and talked to you at the Smithsonian Institute grounds on the occasion when a man asked you for the makings of a cigarette?

To which the respondents objected, the Court overruled the objection and the respondents severally excepted.

Answer: No. I did not recognize Stewart.

Question by Mr. O'Leary: Did you, on the 16th day of December, 1927, after having seen Detective Stewart on the witness stand, while he was being questioned by Major Gordon, then, to the best of your recollection, recall Stewart as the same man that had approached you and talked to you at the Smithsonian Institute grounds?

To which the respondents objected, the Court overruled the objections and the respondents severally excepted.

Answer: No, I did not say that, Mr. O'Leary. I will have to explain to you——

(The question was repeated by Mr. O'Leary.)

Answer: No.

Thereupon the witness continued as follows:

The instance to which I have referred about the man speaking to me near the West end of the Court house was as follows: I was coming back from lunch and was standing on the sidewalk when a man came up to me and said, "How can I get in there to hear that damn thing?" He said, "I have been waiting around all morning and have not been able to get in for some reason or other." But I never made any reply to him at all. He then said, "What are they doing in there?" Or something like that. I didn't answer him at all, and he said, "What do you think of that case," or "that trial"—I am not sure of his exact words, whether

Q. That is all right. Please explain. You heard what the Court said.

he said "case" or "trial." I didn't say anything at all. I just walked away from him and came back into
481 this room (indicating the jury room). Jurors Heaton and Bailey were not in there when I came in, they came in later. There was no one in there when I came in.

482 Thereupon the following occurred:

Question by Mr. O'Leary: Tell the Court what you said to the jurors Heaton and Bailey.

To which the respondents objected, the Court overruled the objections, to which ruling the respondents severally excepted.

Answer: Why, when they came in they said, "You got back early today——"

The Court: No; not what they said. What the witness said.

By Mr. O'Leary:

Mr. Hoover: I think your Honor should first have it made to appear that this witness either does or does not recognize the man who approached him. I do not think we should allow to come into this case anything that may have been said by this witness as a result of being approached by somebody who is not shown to have some connection with the respondents.

The Court: I think that goes to the order of proof, and it is preferable that that should be done.

Mr. Hoover: I think the Court has absolute control of that.

The Court: I know.

Mr. Hoover: And in the exercise of your discretion I think your Honor should require them to prove whether the man was in any wise connected with the respondents. If that evidence cannot be supplied, then anything that may have happened when he approached him would not
483 be evidence, and some time we would have to move to strike it out; and in view of that, I ask your

Honor, in your judicial discretion, to have them prove that he could or could not identify this man.

Mr. Douglas: I ask counsel now, in open Court, if he proposes to supplement any additional proof, or any proof, because there is none now, that the man at the west gate of the Court house was connected with the Burns Agency or with any of the other respondents.

Mr. Gordon: I do not have to answer that.

Question by Mr. O'Leary: Now you tell the Court then what caused you to come back to the jury room earlier than usual.

To which the respondents objected, the Court overruled the objection, to which ruling the respondents severally excepted.

Answer: Why I came back to the Court because I didn't want to talk to the man and I knew that if I came in here he wouldn't come in and follow me.

Mr. Littleton: I move to strike that out as being an implication that this man, whoever he was, was somebody for whose conduct respondents are responsible and there is not a shred of evidence to support it.

The Court: What the witness said about what he knew that the man would not follow him, that much of it must go out.

Mr. Hoover: Your Honor overrules the motion to strike out the balance of it?

The Court: Yes. Overruled.

To which ruling the respondents severally excepted.

Thereupon the witness continued as follows:

"While I was a juror I went to Horan's place about three or four times, Sunday the 23rd of October, Saturday the 29th of October, Sunday the 30th of October. Those
484 are the only times to the best of my memory. I went there about four or five p. m. Sunday, October 23rd. I do not remember all of the people I saw, I think Mr. Dougherty, the bar tender, was there. I do not remember anyone else. I was there probably half an hour. I went there from my home. Thereupon Mr. Wright objected to this line of testimony as useless consumption of time unless there is some claim that on this occasion he

met someone that was a Burns' operator. Thereupon the witness continued: It was either the 23rd or 30th of October that I saw Klein at Horan's, I'm not sure which. When I first saw Mr. Klein I was coming out of the door and he was coming in about the same time I was coming out and we were right close together. I think he stayed in about 5 or 10 minutes and then came out and went up the street and went on Virginia Avenue. I didn't see him any more that day. At that time I didn't know Klein and did not know that he was connected with the Burns Agency. I did not point him out to anyone. I did not ask Mr. Dogherty anything about him. There was no conversation between me and Dogherty about him. I was outside while that man was in the place. I was 15 or 25 feet from the entrance, just standing there alone. The man came out of the same door he went in. I'm referring to Klein. He walked across the street and went down Virginia Avenue. I still stood there. I did not go across the street. I remained there half an hour or an hour after this man passed out of my sight. He turned east on Virginia Avenue. I identify Reuben A. Bogley as the manager of the place where I worked. On the 29th I left Topham's at 1 o'clock by the L Street door. While I was a juror I never went out of the Pierce Street door of Topham's. We have a time clock right inside the L Street door. I remember Mr. Knecessi who stood up in court one day. I saw him about 1:30 that day. I went directly to his place and did some electrical work. I left there at 2:30 and went alone to Horan's, arriving there about 3. Up to this time I had not had anything intoxicating to drink. Horan's is at 411 Four-and-a-Half Street. While I was there a man named Norton came in. I don't know his first name. He did work for the Drew Construction Company. He is not the Norton who stood up in court the other day. I don't know whether Mr. Hawken, my attorney, located him. Norton and I were there about 5 minutes together, and then we came out to a little store on the sidewalk on the front of Horan's place. The buildings join one another. There is a glass window or front. We were standing there talking when a man named Boss drove up in his automobile. I don't know his first name or where he lives. Mr. Hawken located him and he promised to

485

come to Hawken's office, but never did. The last time I saw Boss was with Mr. Hawken, 2 or 3 days after the jury was dismissed. While Boss, Norton and I were standing there talking, I noticed a man coming north on 4½ Street. He walked over to an automobile standing directly in front of Horan's place, that was there when I arrived. I could not see anyone in it. He opened the door of this machine and reached in and shook some man by the shoulder who was lying on the back seat. This man got up and came out of the car. I recognized him as Ray Akers, whom I had known 2 or 3 years. Two or three months before this I had had a talk with him about making a bill fold. He walked over to the door. This first man, whom I now know to be Don King, went into the door first. As Akers went in the door he beckoned for me and he wanted to see me. Boss and Norton were still standing there. Akers was directly in the door and king had passed out of sight. I told Boss and Norton I would see
486 what he wanted. They told me to let him go. I went anyhow, and as I walked in, I think Akers said to me, "Come on and have a drink, Eddie, we will let this fellow pay for it." About the same time King turned and said, "Are you still on the jury?" I said, "Yes, but I am not allowed to talk to you about it." They walked back to the rear of the bar room, but in the same room. Akers said to Horan, "I thank you for the bed, Maurice." Horan said, "What do you mean?" And Akers said, "I was asleep in the back of your car." Horan said, "That is all right." I asked Horan if I could speak to him a minute. He said "Yes." There is a back room at the end of the bar. I went into this room with Horan and asked him if he knew who this man, referring to King, was. I said, "I don't want to talk to him. He is looking for trouble." I don't know whether Horan made any reply, or not. He walked out of the door and I walked out behind him. As I came out King had his elbow on the bar, and his head on his hand, and he had a roll of bills in his hand. He said, "I wish I had gone to the races today; today is the last day. If I had played my money the way I intended to, I would have made plenty of money. But it doesn't make any difference. I have got plenty of money anyway." When I first came out of the door Akers was coming out of the toilet on the other side. When I came out

he asked me what I knew about Mr. Sinclair. "What kind of a fellow is he?", he said. I told him I didn't know anything about it. King was standing with his back to the bar, and Akers on the other side of him. I was more in the center of the bar. I told him I didn't want anything from him. When I wanted anything I could buy it myself. Then I turned around and was talking to Horan. King and Akers got some liquor. I didn't. I got a bottle of near beer when King and Akers were in there. Just
487 at that time Randall Kidwell came in. (The witness identified Randall Kidwell.) He is not related to me. Up to the time he came in there were 4 or 5 men whom I don't know, in the room besides Akers, King, Horan and myself. None of those other men participated in the conversation. They were all in the front of the building. I was in the center of the room. Those men were the whole length of the bar away when Akers said something about Sinclair. They were the same distance away when King said something about money. I don't know what they were doing. While I was talking to Randall Kidwell, Akers walked up and looked at the Bulletin, and walked back and told me he wanted to see me. While I was standing there talking to Randall Kidwell, Akers came up to me on three different occasions and said, "Come on back here, I want to talk to you." I said, "I will talk to you after awhile." Kidwell and I were standing in the center of the room talking. King was in the back of the room. Then I got tired of them bothering me. I asked Kidwell if he had a machine, and he said he did, and I said, "Let's get away from here." We walked out and got in his machine and left there and went to the house of a man named Taylor; Jesse Taylor, who stood up here in court. I believe Akers did ask me something about the bill fold. I said, "I don't want to talk to you." And he said, "Eddie, how about that bill fold? When you make it, will you put gold on the corners?" I said, "No, I can't put gold corners on, but I will put your name in gold letters on it, if you want it." Then while I was talking to Kidwell he came up and asked me if I knew Mr. Holt. I told him the first time I had met Holt was in court. There was a Mr. Holt serving on the petit jury. He said, "They

tell me you were at his house, and they raided him for bookmaking." I said I didn't know anything about
488 it; I never was in his house in my life; I didn't know the man, and he said something about Holt having a tip from some of his friends who were on the police force that they were going to raid his place, and that he had gotten away with what he had before they came to his place. During this conversation there were just Randall Kidwell, Akers and myself standing there. King was at the end of the room. Horan was at the front of the room. I think that I have told all that Akers said to me and I said to Akers, and all that King said to me and I said to King. I had a conversation with Boss and Norton about an automobile in front before I had ever seen King. In Horan's there was no mention made of the word "automobile," as I remember. I was talking to Boss and Norton in front of the place about the Hub, cabs or Boss's machine. When Boss first drove up there, the hub cap was broken off, and it had splashed grease on the disc wheel. We were talking about that, and I asked him how it happened. He told me he had gone up a very narrow alley and hooked it in a lamp post. I had often seen Boss down there. There was no talk in Horan's in my presence about going over to Juror Holt's place of business. Akers looked at the Bulletin and came back and they were talking about the races. I wasn't back there and did not hear them. I do not recall anything said about placing a bet. Nothing was said in my presence about going any place. I think I have told everything that was said, so far as I recall. Randall Kidwell wasn't there when Akers made the statement about Sinclair. I think Kidwell was there when Akers asked me about being at Holt's place. I know a man by the name of Foley; I don't know his first name or where he lives. I have heard he works for the Health Department. I have often heard people call him Judge Foley. I don't know whether he is a lawyer. I think I saw him at Horan's
489 once or twice while I was a juror in the Fall-Sinclair case. I think it was once, on Sunday afternoon. I don't think it was the Sunday I saw Klein. I think it was 2 or 3 weeks before the King-Akers incident. I was serving in Criminal No. 1 and saw him several times. Foley and I had a talk on that occasion.

Thereupon the following occurred:

Q. Just one final question about this incident when King and Akers and yourself were present: You did not—is that correct—on that occasion take any intoxicating liquors?

Thereupon the question was objected to as immaterial, the objection overruled, and an exception duly noted, and the witness continued:

I had a drink in Horan's before I met either King or Akers. No one was with me.

Norton was there, and some other men, I don't know who they were. This was probably 15 or 20 or 30 minutes before occurred the incident when King and Akers were present.

Thereupon the following occurred:

Q. And how much intoxicating liquor, and what kind of intoxicating liquor did you imbibe on that occasion?

Thereupon the question was objected to as irrelevant and immaterial, the objection was overruled and an exception duly noted, and the witness continued:

I only had one drink, about an inch of peach brandy. At the time I took that drink I did not talk to anybody about the rate of pay of a juror in the Fall-Sinclair case. There was no talk on that occasion or any other occasion that I heard of about the rate of pay of petit jurors in the Fall-Sinclair case. There was no talk in my presence on the 29th about Harry Sinclair either being or having been a turfman, and running horses. There was nothing
4980 said in my presence that day by King or by Akers about Sinclair's money. To the best of my recollection I have told the Court all that transpired at Horan's that day. Immediately after I left Horan's place with Randall Kidwell, Akers came to the door and beckoned for me and told me that he had something important that he wanted to tell me. I told him I would be back later. King was then on the inside. I didn't see him come out. Then I went in Randall Kidwell's automobile to Jesse Taylor's home, 1811 First Street. I remained at Taylor's not over 15 minutes and then went back to Horan's about 3:55. I

saw Horan and Dougherty then. I did not see King or Akers, nor did I see them any more that day. I saw Akers the day before the mistrial. The next day, Sunday, October 30th, I went to Horan's about 3 p. m. I remained there an hour or an hour and a half and then left and went up town. Dougherty and Norton were about the only men at Horan's that I knew. I think it was this Sunday that I passed Klein at the doorway. I am not sure. On the day preceding the day when there was a mistrial in the case, I saw Akers at Horan's about 8 p. m. I was not with him 3 minutes. On that occasion I talked to Akers. King was not there. The next thing that occurred was the mistrial. Several weeks after the mistrial I saw someone in the neighborhood of my house. It was a week or more prior to the start of this contempt case. I can fix the day. It was prior to the time Easby-Smith and Hawken came to my house. It was prior to the time I first came and spoke to Burkinshaw. I do not know for sure, absolutely positively, who it was that approached me at the west end of the court house. I do not know absolutely positively and for sure who it was that approached me in the museum grounds.

Thereupon the following occurred:

491 Q. Do you recall an occasion, when you were serving as a petit juror, that there was a talk among the jurors on the subject of being watched or being shadowed? Do you remember such an incident?

Mr. Wright: We object to that as being entirely immaterial and irrelevant.

Mr. O'Leary: That calls for a yes or no answer.

The Court: I think I will take the yes or no answer.

A. Yes.

Q. When was that? A. I cannot say the exact time. It was some time during the trial.

Q. Can you tell us about how long either before the mistrial was declared or how long after the trial started? A. I think it was about two weeks after the trial started or something like that.

Q. And where did it occur. A. In the jury room.

Q. What do you mean by the jury room—the consultation room?

Thereupon an objection was made to interrogation on this subject as utterly irrelevant and at best but hearsay, and a motion was made to strike out the answer "Yes." The motion to strike was overruled and an exception duly noted, and the witness continued:

By jury room I mean the first room on the east side of the corridor of this floor, where the jurors assembled.

Thereupon the following occurred:

"Q. Now, to the best of your recollection what jurors were present on that occasion?

492 Thereupon the same objection was made, the objection was overruled and an exception duly noted, and the witness continued:

I don't know exactly who was present. There were about 6 or 8, or probably more. I think it was one morning that we sent out into the jury room during an argument on a question of law. Jurors Herzog, Holmes and Kern were there.

Thereupon the following occurred:

Q. Now, I am not asking you to tell what they said. Did Jurors Herzog, Holmes and Kern participate in that talk.

Mr. Wright: I object to that, if the Court please, as irrelevant. If the talk is not relevant, may it please your Honor, how can participation in it be relevant?

The Court: I understand your point, Judge. You may take the answer. Objection overruled.

Mr. Wright: An exception.

Mr. Douglas: An exception, your Honor.

The Witness:

A. Yes, sir.

Mr. O'Leary:

Q. And without going into anything that was said, how long was the talk on that subject continued?

Mr. Wright: The same objection.

The Court: Objection overruled.

Mr. Wright: Exception.

The Witness:

A. Not long; five or ten minutes.

Mr. O'Leary:

Q. Now, during the time that that talk was going on, state whether or not other members of the jury panel came into that consultation room?

Mr. Wright: I object to the question, your Honor. There already has been a definite ruling of the Court announced on at least three occasions that what these jurors said on this occasion, if anything, was irrelevant because it
493 was not chargeable against any of these respondents.

The Court: It may be that its relevancy will later appear as the evidence further develops. Only on that theory is it admitted, that later its relevancy may be made to appear.

Mr. Wright: We reserve an exception.

The Witness:

A. Yes, they came in.

Mr. O'Leary:

Q. This question also calls for merely a yes or no answer: Was there, or not, another occasion when there was a talk in the jury room on the subject of jurors being watched or followed?

Mr. Wright: The same objection.
The Court: The same ruling.
Mr. Wright: An exception.
Mr. Douglas: An exception, your Honor.

The Witness:

A. Not as I recall. I am pretty sure about that.

Mr. O'Leary:

Q. During the time that you were serving as a petit juror in the Fall-Sinclair criminal case, state whether or not you did report or talk to your mother and father about these various incidents that you have described here in court, the

man approaching you at the west end of the court house; the museum grounds incident; and the fact of the man having been to the house, and to the barber shop?

Mr. Wright: We object to the question as irrelevant. A conversation with his father and mother can have no more relevancy that his conversation with any other person.

The Court: I will take a yes or no answer.

Mr. Wright: We reserve the exception.

The Witness:

A. Yes, sir.

Q. Now, without telling what you said to your
494 father or mother or what they said to you, you tell the Court which of the incidents you did thus discuss with your mother.

Mr. Wright: I object to the question, because that question cannot be answered without calling for the conversation.

The Court: You may take the exception.

Mr. Wright: We reserve the exception.

Reframed question: Mr. Kidwell, could you say whether or not you mentioned the Museum ground incident; the incident at the west end of the court house, and such as that?

A. Yes, sir.

Q. Now, which of the incidents did you mention to your mother?

Mr. Wright: Same objection. It calls for the conversation.

The Court: The same ruling.

Mr. Wright: An exception, if your Honor please.

The Witness:

A. The museum incident and the incident at the west end of the court, I think.

Q. I ask you specifically if you remember mentioning the incident in the anteroom when Miss Heaton and Mrs. Bailey were present.

Mr. Wright: I object to the question, because it calls for the conversation.

The Court: It is the same thing. He may answer.
Mr. Wright: We take the exception.

The Witness:

A. I don't remember that I did.

Q. Was the incident at the Museum grounds, and the incident at the west end of the court house—were they the only incidents that you mentioned to your mother?

Mr. Wright: The same objection. It calls for a
495 conversation.

The Court: I think that is a better form of question. Objection overruled.
Mr. Wright: Exception.

The Witness:

A. Those are the only ones I remember.

Q. Now, I ask the same questions with regard to your father. What incidents did you mention to your father at the time you were serving as a juror?

A. I don't think I mentioned anything to my father.

Q. Now, I specifically ask you whether or not, without going into anything that was said by any of you, whether or not you and your mother talked on the subject of the man's having been at your home at the time that you were serving as a petit juror?

Mr. Wright: We object to the question.
The Court: You may take the answer.
Mr. Wright: We reserve the exception.

The Witness:

A. Yes, sir.

Q. And state whether or not on that same day when you discussed the subject with your mother, you later on discussed the same subject with your father?

Mr. Wright: The same objection.
The Court: The same ruling.
Mr. Wright: An exception.

The Witness:

A. I did that night.

Q. On that same night, state whether or not you discussed with your father the subject of the man's having been at your father's barber shop in Congress Heights.

Mr. Wright: The same objection.
The Court: The same ruling.
Mr. Wright: An exception.

496 The Witness:

A. Yes, sir.

Thereupon the witness was cross-examined by Mr. Hoover as follows:

I went to Horan's place, 411 4½ Street, on the afternoon of October 29. Before going there I left my place of employment and went to Kneessi's, and from Kneessi's I went to Horan's. I had no special engagement to meet anyone there that day. I had never seen Donald King before that day. On that occasion I don't remember Akers remarking to me that I had no right convicting anybody of anything, for all I had done. He did not remark to me that he didn't see how I had been picked as a juror. I did not say to him that I was a very good yes-and-no man, and that I would give my answers yes and no as I wanted to give them, and that these smart lawyers could not make me say what I did not want to say. I did not remark to Akers or King, or either of them, that I was getting $5 a day for service on the jury, and that I was not paying a whole lot of attention to what was going on. I made no such statement. I did not remark, either to Akers or King, that there was nothing wrong with this fellow Sinclair; that he was all right; that he was a democratic fellow, and that he acted just like anybody else. I did not state to either Akers or King that Sinclair had so much money he didn't have to put on airs. Akers did not remark to me that he supposed that I would be riding around in a big car soon. I made no such remark to him as this: "Well, if I don't have one as long as this block I will be very much disappointed." Akers did not say to me that he supposed I was figuring on getting something out of this, and I did not say in response that Sinclair had plenty of money, that money was nothing to him, and that there was no limit to what he

might do if he wanted to. I did not say to either King or
Akers that the members of the jury, of which I was
497 one, had on one occasion had a game of cards and
when one of the jurors had gone broke, I suggested that they try a dice game. On the occasion that I met Akers and King at Horan's, Akers did not introduce King to me, nor tell me who King was. He told me this man worked in the office of the Washington Railway & Electric Company. I saw Akers Tuesday night, November 1, 1927. It was the night before the jury was discharged, at Horan's. I saw him because I had seen a piece in the paper that he claimed I knew a detective at the Fourth Precinct; that I had a conversation with the detectives at the Fourth Precinct, and I went there to get him to take me to the Fourth Precinct to find out who those detectives were. He refused to go with me. During the time that I was serving as a juror in the Fall-Sinclair case, it was my practice to go down to the Museum grounds to have my lunch there every day that the weather was good. I remember the testimony that on a certain day not precisely fixed, I sat upon a bench. On other days when I went down there I sometimes sat on the ground near some of the big trees on the west side of 9th Street. I don't know who Daniel Foley is. I just know his name.

Thereupon the witness was cross-examined by Mr. Wright as follows:

I recall the vicinity of the museum grounds where 9th Street comes in. There are several large trees just to the right of there. A little farther west of those large trees and near the corner of the building there is a foot path made across the grass. I recall an unusually large tree about 30 or 40 feet from the south curb in the museum grounds or west of 9th Street that I would come to if I followed the extension of that path over the grass. I might have at some time or other sat under that tree, or leaned against it and eaten my lunch. I remember such a tree. At Ho-
ran's, King was at the far end of the bar from the
498 front door when he had that money in his hand.
There were so 3 or 4 other men up front. I was between King and the men in front when he had the money

in his hand. Just as I came out of the door of the back room he was leaning on the bar with his hand up to his head, with the money in his hand. He was between me and the front door and I walked right straight past him. I saw the money in his hand before I got to him as I came out of the room and passed him. He was facing towards me. He had his left elbow on the bar. The back of his hand was towards the front of the saloon. He was 25 or 30 feet or more from the men who were in front when I saw the money. When you enter Horan's the bar is on your left.

Thereupon the witness was cross examined by Mr. Douglas as follows:

The King and Akers talk that I had at Horan's was on Saturday, the 29th. I think it was the next day, Sunday, that I saw Klein. I am pretty positive about that. Mr. Burkinshaw asked me if I didn't think it was the 23rd, and I said, "No, I think it is the 30th," and he said that according to the reports Klein was not here or was not following me on the 30th. Up to that time my mind was perfectly clear that it was the 30th. I know now that it was after the King-Akers conversation at Horan's. I think it was that Sunday, the 30th. As I went out of Horan's place Klein went in, just passing each other in the ordinary way. We just met right at the door. He was coming in and I was coming out. He did not say a word to me and I said nothing to him. I came out and stood on the sidewalk a few minutes, and a few minutes later Klein came out of the place and walked right across the street. I was probably 15 or 20 feet away from him. He did not come back while I was there. I was there nearly an hour. I saw no more of him. The only time that I saw him at any time
499 before the jury was discharged was when he came in as I came out, and he came out and went some other way and left me there. At 5th and G a man, whom I afterwards identified as Merritt, one of the Burns operatives, boarded a car at the time I did. He did not come in contact physically with me, close to me, say anything to me, or do anything that interfered with my movements, or thoughts, or anything. I got on the car and I think there were 3 or 4 people who got on behind me before Merritt got

on. I went directly to the back of the car, and he was either at the center or the far or opposite end of the car from me, with quite a number of people between us. I am not sure whether or not he got off the car when I got off. I did not see him. It was after this case had started that I first recognized Klein. I did not recognize him in the District Attorney's office or the grand jury room or anywhere else.

Thereupon the witness was examined by the Court as follows:

I used to know a man who looked very much like Merritt; and I saw him standing there, and I looked at him the second time to see whether or not he was the man I knew. It was Merritt's resemblance to a former acquaintance of mine that led me to pick out Merritt as a man that I observed when getting on the street car on that occasion. I first saw that supposed resemblance before he got on the car. I got on first, and 3 or 4 people got on behind me before Merritt got on the car. It was a one-man car, and I walked directly to the back of the car when I went in, and there were several people in the center aisle of the car. I did not see Merritt standing on the platform of the car, or come up to the center of the car. I do not remember whether he got out first or whether I got out first. I did not pay any more attention to him. I did not see him
500 leave the car.

Thereupon Mrs. Mary Pearl Kidwell was called as a witness for the United States, and being first duly sworn, testified as follows:

I recall an incident that occurred while my son was a juror in the Fall-Sinclair case, when a man came to my house and knocked at the door. I went to the door and opened it and he asked if Mr. Kidwell was home. I said, "Which Mr. Kidwell do you want to see?" He said, "The Mr. Kidwell, the barber." I said, "Mr. Kidwell is at the shop now, at the barber shop." He said, "Where is the barber shop?" I said, "Congress Heights, in the Myrtle Apartment." He said, "I do not know where the Myrtle

Apartment is." ' Said, "Well, anyone at Congress Heights will show you." He said, "Very well." He said, "I have some papers here I want him to sign concerning the barber shop." He said he did not want to have so many papers come in the first of the year to have to be signed. He said he was from the Health Department. He did not tell me who he was. He left and I have never seen him any more. I have told the Court, to the best of my recollection, all that he said to me and all that I said to him on that occasion. When this occurred, my son Eddie Kidwell was living at 1637 U Street. He did not come home from work that day. It was around 5 or 5:30, and was just beginning to get dark. I saw my son later that day about 6 o'clock.

Thereupon the following occurred:

Q. Just answer this question yes or no. When you saw your son that time, did you tell your son what had occurred about the man coming to the house? A. Yes, sir.

501 Mr. Hoover: That is objected to, if your Honor please, as irrelevant and immaterial.

The Court: The objection is overruled. The question has been answered.

Mr. Hoover: We desire to note an exception, may it please your Honor.

Q. Do not say what your son Eddie told you. When you told your son that, did your son make a reply to you on that subject?

Mr. Hoover: That is objected to as well.

The Court: The same ruling.

Mr. Hoover: We desire to note an exception.

The Witness:

A. Yes, sir.

Q. Now, on the same day or night or evening when your husband, Edward Kidwell, Sr., came home—just answer this yes or no also—did you tell your husband in the presence of your son, Eddie, about the fact of the man having come to the house? A. Yes, sir.

Mr. Wright: We object to that, your Honor.

The Court: The same ruling.

Mr. Wright: We desire to note an exception.

Q. State whether or not on that occasion, in the presence of your son and husband, your husband said something about a man having come to the barber shop. Just answer yes or not. A. Yes, sir.

Mr. Hoover: We object to that, your Honor. Perhaps it might be well to have an understanding that our objection applies to this entire line of examination without the necessity of having to repeat it.

502 Volume No. Two.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal, Contempt, No. 17.

UNITED STATES

v.

HARRY F. SINCLAIR, WILLIAM J. BURNS, W. SHERMAN Burns, Henry Mason Day, Sheldon Clark, and Charles L. Veitsch.

Bill of Exceptions.

503 The Court: That may save time, and it may be understood on the record.

Mr. Douglas: That is understood on behalf of all of the respondents, your Honor.

The Court: Yes.

Thereupon the witness continued as follows:

There was a talk or discussion between myself and my husband and my son, Eddie, about the fact of a man having been to the house, and about the fact of a man having been to the barber shop. During the time my son was on the jury in the Fall-Sinclair case he mentioned to me an incident said to have occurred in the museum grounds, and an incident about a man approaching him at the west end of the court house. I do not remember his mentioning any other incidents that occurred to him that he observed while he was a juror in the Fall-Sinclair case.

Thereupon **Edward J. Kidwell, Sr.**, was called as a witness for the United States, and being first duly sworn, testified as follows:

I recall that during the time my son was a juror in the Fall-Sinclair case a man came to my barber shop in the Myrtle Apartment at 3109 Nichols Avenue, Congress Heights. He called there one evening between 7 and 8 o'clock and asked me if a Mr. Stewart ran a barber shop in Congress Heights. I told him no, that there had been a Mrs. Stewart who ran a beauty parlor there, but she had left and gone to Anacostia. He thanked me, and I believe that is all he said, to the best of my recollection. That same night there was a talk between myself, my wife and my son, Eddie, about the fact that a man had been to my house earlier in the day, and about the fact that a man had been to my barber shop.

504 Thereupon the following occurred:

Mr. Hoover: Is that in under the same ruling and exception, your Honor?

The Court: Yes.

Thereupon **Ruben A. Boaley** was called as a witness for the United States and, being first duly sworn, testified as follows:

My residence address is 1507 28th Street, N. W., and my business address is 80 L Street, N. E. I am Manager of Topham's Trunk and Leather Goods Factory. Edward J. Kidwell was employed there during October and the early part of November, 1927. I was in charge at that time. I do not have immediate supervision of the time clock. One of my employees does. I look at it occasionally.

Thereupon the following occurred:

Q. During that time, from October 18th to November 2nd, both dates inclusive, was the Pierce Street door open so that your employees could go in or out?

Thereupon the question was objected to on the grounds that the truth or falsity of the reports was not at issue, that they were not received as evidence of the facts contained in them, but rather for the purpose of showing that a system

of shadowing had prevailed during that period, and that there is no evidence here that this will throw any light upon it at all; the objection was overruled and an exception duly noted, and the witness continued as follows:

The Pierce Street door happens to be a freight door and was open only when there was freight coming in or going out. It is never opened unless the key is taken back from the other end of the block, in charge of somebody, and as soon as the purpose is accomplished it is locked and
565 the key brought back. I do not recall what time Kidwell left Topham's on October 29th. His time is a matter of record there. Everybody that comes in punches a clock there when they come in and when they leave, I would not undertake to state any time.

Thereupon **Edward L. Kneessi** was called as a witness for the United States and, being first duly sworn, testified as follows:

My place of business is at 409 7th Street N. W. On Saturday, October 29th, Edward Kidwell, Jr. came to my place of business about one p. m., and left about 2:30 after doing some electrical repair work.

Thereupon **Mrs. Annetta L. Bailey** was called as a witness for the United States and, being first duly sworn, testified as follows:

During the time that I was serving as a juror in the Fall-Sinclair case, I recall a certain incident that occurred at noon recess when Miss Heaton and I were in the anteroom next to the court room proper. I could not say for certain what day it was. I believe it was Thursday or Friday before the mistrial. On that occasion I recall Edward Kidwell, Jr. coming into that room. There was a talk between Kidwell and either Miss Heaton or myself in my presence on the subject of keeping out of trouble. On October 28th or during the time I was serving as a juror in the Fall-Sinclair case I was at the Convention Hall Bowling Alley when was also present a gentleman by the name of Robinson.

Thereupon the following occurred:

Q. State whether or not on that occasion when you were in the bowling alley, you became aware that certain
506 men were looking at you, watching you, observing you?

Thereupon the question was objected to on the ground that the evidence is that the shadowing of Mrs. Bailey ceased on October 21st and there is no connection between this incident and any of the respondents; the objection was overruled and an exception duly noted, and the witness continued:

Yes, I became so aware. I do not recall my movements when I left the court house on Wednesday, October 19th. I did not leave the court room in company with Miss Heaton and board a car at 5th and G, when Miss Heaton left the car in front of her house and I remained on the car. I went back to work at Jordan's Piano Store, 13th and G, N. W. On that occasion I was residing at 2700 Connecticut Avenue. On October 20th I did not leave my home about 9:05 and come directly to the court house by trolley car. I left my home at 8:30 and went to work at Jordan's, and from Jordan's I went to Court. In the afternoon of the 20th, I was at Brook's shop in company with Miss Heaton shortly after 5. I did not go into the Rosedere Shop, and from there walk to 14th and New York Avenue and there separate from Miss Heaton. I went back to work after I left Brooks. On the 21st I did not leave my home at 9 o'clock and go by street car to the court house. I went from my home at 8:30 to my place of business at 13th and G, and from there I went to Court.

Thereupon **Bernice K. Heaton** was called as a witness for the United States, and being first duly sworn, testified as follows:

I recall an incident that occurred while I was a juror in the Fall-Sinclair case when Mrs. Bailey and I were in the ante room to the court room at the noon recess when Juror Kidwell came into my presence. On that occasion
507 there was a talk between Kidwell and me or Mrs. Bailey, on the subject of keeping out of trouble.

Thereupon the following occurred:

Mr. Hoover: That goes in subject to the same ruling, your Honor?

The Court: Yes.

Thereupon the witness continued:

I was present during the time that the trial was in progress in the conference room of the jurors, when the subject of being watched or shadowed or followed was mentioned or discussed.

Thereupon the following occurred:

Mr. Hoover: That is subject to the same ruling, your Honor, I presume?

The Court: Yes.

Thereupon the witness continued:

Unless my memory is refreshed I cannot recall what time I went home on the evening of October 19th. It was before 10:30 P. M. that I went home.

Thereupon the following occurred:

Q. On the morning of October 19th, you are asked whether or not you left your home at 9:30 and came to the court house by trolley, arriving here about 10:00 o'clock?

Mr. Douglas: That is subject to the objection I made a while ago.

The Court: Yes.

Thereupon the witness continued:

No, I did not leave at 9:30. I left at 7:45 and proceeded to my place of employment, C. & P. Telephone Company, 725 - 13th Street, N. W. I left there about 9:40, and proceeded to the Jordan Piano Company and waited for Mrs. Bailey, and then came to the court house. On the afternoon of October 19th after court, I did not go to
508 the Stevens' Ladies Shop, nor to the Rosedere Shop, nor did I separate from Mrs. Bailey at 14th and New York Avenue. On October 21st, I did not leave my apartment house at 8:30 a. m., board a trolley car at 14th and H

Street, and arrive at the court house at 9:30 a. m. I left my home at 7:45 and went to my place of employment, and then left there at 9:40 and went to the court house.

Thereupon **Randle Kidwell** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at Giesboro Point, D. C. I am in no way related to Edward Kidwell, Jr., but I have known him for about 4 or 5 years. I was at Horan's near beer saloon on 4½ St., S. W., on Saturday, October 29, 1927. I arrived there at 2:30. I saw Kidwell in the bar. I also saw Horan and 2 or 3 other people whom I do not know. I do not know Ray Akers by sight. I do not remember seeing the man (Ray Akers) that is now standing. I was not in the court room when Donald King stood up. I went in the bar room and saw Edward Kidwell, and he walked up to me and asked me if I had a car. I said, "Yes." He said, "Would you mind taking me down to a friend's." We walked out and went down 4½ Street. I know Jesse Taylor. We went to his place on 1st Street. I do not know a man named McLaughlin. He was not present on that occasion. I know Daniel P. Dougherty. He was not there. I do not know a man named Boss, nor a man named Norton or Notton. There was no drinking of intoxicating liquors on that occasion in my presence. I left Horan's with Kidwell around 2:30 and went directly to Jesse Taylor's. I have told the Court, to the best of my knowledge and recollection, all that occurred on that occasion.

Thereupon the witness was cross-examined by Mr.
569 Hoover as follows:

When I started out with Edward Kidwell, I did not hear some man there call to him and say, "I want to talk to you about something," or something of that kind. I do not remember ever seeing Kidwell in Horan's before. I was there with him about two minutes.

Thereupon **Daniel P. Dougherty** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am employed as bartender in Horan's near beer saloon on 4½ Street. I know Edward Kidwell, Jr. by sight. I was not present at all at Horan's on October 29th when Edward Kidwell and Akers were there, nor did I see Kidwell in Horan's at all that day.

Thereupon **Jesse Taylor** was called as a witness for the United States and, being first duly sworn, testified as follows:

I live at 1805 First Street, S. W., and was living there on October 29, 1927. I know both Randle Kidwell and Edward Kidwell. I recall an occasion when they came to my house. It was about 3 o'clock. I do not know the day. They came in Randle Kidwell's automobile. That is all that I know of the movements of Edward Kidwell on that day.

Thereupon **Joseph McLaughlin** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 814 B Street, S. W. and was living there on October 27, 1927. I know Edward Kidwell, Jr. by sight. I know Maurice Horan and Daniel Dougherty. I was not in Horan's near beer saloon on October 29 when Edward Kidwell was there. I did not see him that day.

510 Thereupon **Maurice Horan** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am the proprietor of the near beer saloon at 411-4½ Street, S. W. Daniel P. Dougherty is my bartender. The bar there is about 20 to 25 feet long. In the rear there are two doors, one to the toilet and one to a little room. The bar is between the two doors. I have known Edward J. Kidwell, Jr. for a couple of years. I know McLaughlin and Randle Kidwell by sight. I don't remember seeing Randle Kidwell in my place on October 29 when Edward Kidwell was there. Akers and Donald King were there then. On that occasion I saw Akers first. I came to the place around 11 a. m. and Akers was there. He asked me if he could sit out in my car in front. I said he could if

he wouldn't smoke. He went out and sat in the car. Then Akers, King and Kidwell walked into my place and walked to the rear end of the bar. Akers called me and said, "Thank you, Maurice, for the bed." I said, "What bed do you mean?" He said, "For sitting in your automobile." I said, "All right." To the best of my recollection, King ordered three bottles of beer. I am sure he had a dollar bill on the bar in front of him. I gave him the three bottles of beer, and Kidwell said to me, "Maurice, I would like to speak to you in private." We went into the back room and he said to me, "Do you know that man with Akers?" I said I didn't and he said, "I don't know that man and don't want to talk to him." He said no more. He walked out of the room, and I walked right out after him and went about my business. I don't remember how long Kidwell, Akers and King remained at the end of the bar. I paid no more attention to them. I saw them between 4 and 5 o'clock outside the door. As near as I can say, they entered the place between 12 and 2 o'clock.
511 Around 4 or 5 o'clock I was standing out in front of my place. The three came out. King asked Akers where he could get a street car to go up town and Akers told him across the street. I was the only one tending bar that afternoon. Neither during that incident nor prior to it did Kidwell purchase a drink of peach brandy from me. All that was purchased was three bottles of beer. King paid for what Kidwell drank. At the time the three men were near the back of the bar, I did not hear what they were saying. To the best of my recollection I have told all that transpired on that occasion.

Thereupon the witness was cross-examined by Mr. Hoover as follows:

Akers was there when I got there around 11 o'clock. Around 11:10 or 11:15 he asked me if he could sit in my car. The next time I saw Akers was when he came into the place with King and Kidwell. It may have been 3 o'clock then, but I judge it was between 12 and 2. They came in and went to the rear. King put a dollar on the bar and ordered three bottles of near beer. Shortly after that Kidwell asked me if he could speak to me in private and went in the back room with me, and asked me if I

knew the man with Akers. I didn't. King was a stranger to me. Kidwell said he didn't know him and didn't care to talk to him. He did not say any more. He walked out of the room and I did also. The last time I saw him was between 4 and 5 o'clock. I don't recall that he went out with Randle Kidwell and came back again. The only thing that I recall is that I saw him in there sometime between 4 and 5 o'clock. I don't know whether he had gone out and come back in the meantime.

Thereupon **J. Ray Akers** was called as a witness for the United States and, being first duly sworn, testified as follows:

512 I am 35 years old, and reside at Jamesville, Virginia; I have resided in Washington off and on for about 30 years. I attended graded schools, Business High School and Georgetown. I believe that was 1912 or 1913. I know Edward Kidwell. I have known who he was for about 2 years, and to talk to for a little over a year. I have seen him quite often during that year, usually at Horan's, 411 4½ Street. I believe I saw him the latter part of September, 1927 at Horan's. On that occasion there was a conversation between us.

Thereupon the following occurred:

Q. State whether or not after the 18th day of October you at any time saw Edward J. Kidwell, Jr.?

Mr. Hoover: We object to that, as irrelevant and immaterial and not affirmative evidence.

The Court: It goes in subject to be stricken out unless its relevancy appears.

Mr. Hoover: If your honor please, we would like an exception.

The Witness:

A. Yes, sir.

Q. And between the period of October 18 and November 2nd, on how many occasions did you see Mr. Edward J. Kidwell?

Mr. Hoover: Might that be subject to the same objection, your honor?

The Court: Yes.

Mr. Burkinshaw: I understand all this line is.

Thereupon the witness continued:

I don't know exactly; several times. The first occasion was 411-4½ Street. I don't know what day it was. It was the latter part of October. I remember seeing him with King on October 29th. Prior to that I had seen him several times. I talked with him regarding the hap-
513 penings during the trial of Sinclair and Fall. I saw him on October 28th. Horan, King, Boss and I were present. I first saw King about 7 a. m. that day. I next saw him in front of 411 4½ Street. Kidwell was there. I remained there probably an hour or more. I invited Kidwell to come in. The three of us went in together. We had something to drink and a conversation. I had peach brandy. Kidwell had peach brandy or corn. King had a bottle of beer. King paid for the drinks. I had introduced King to Kidwell and there was a conversation that lasted probably an hour or an hour and a half. The subject was the Fall-Sinclair trial. Kidwell said something to the effect that he thought Mr. Sinclair was a very democratic man, and that he admired him for it. He said he understood that he, Kidwell, was getting $4 a day, but heard he had gotten a raise to $5 a day while he was on the jury. It was just a soft job putting in his time. He wasn't paying a whole lot of attention to what was going on. Then he said something about not seeing any advantage in bringing in a verdict of conviction with a possibility that there might be some by bringing in an acquittal. I said that he ought to be pretty well fixed after this thing was over, and something was said by Kidwell about an automobile as long as a block. Then he said something about some fellow who used to be at No. 4, and now at Headquarters, who said something to him when he first got on the jury about wanting to know how he got on there, that he was a fine fellow to get on. He said he was a pretty good yes and no man. I don't remember all the conversation, what was said by everybody. I said something, King said something, and Kidwell said something. Kid-

well said something about a card game or a crap game the jurors had during intermission. Nothing was said on this date about Holt, another juror. King and I had
514 the Laurel entries and were talking about going to Laurel. During that conversation Boss came in. I don't know his first name or where he is now employed. I have not seen him since October 29. He told Kidwell he thought he was talking too damned much. At the time Boss said that Kidwell was shooting off his mouth about what he was going to get and what he expected; talking about the case, that he was not paying a whole lot of attention to what was going on, and the possibilities of what advantage it might be to him.

I got in touch with King on the night of the 28th. I first called Mr. Leo Sack, of the News. Helena Akers, my brother's wife, is secretary to Mr. Mellett, managing editor of the News. Sack was not there. I called him at his house, but did not get him. I called him at the Press Club, and got him there. I again phoned him at the Press Club.

Thereupon the following occurred:

Mr. Wright: We object to all of these questions, your Honor.

The Court: I understand, and your objections and exceptions stand.

Thereupon the witness continued:

I telephoned the Herald between 11:30 and 12 o'clock. I talked with King. I saw King around 7 a. m. on the 29th. I had never seen him prior to that. On that occasion I made arrangements to meet him at 2 p. m. that day in front of 411 4½ Street. After Boss came into Horan's, it wasn't long before Kidwell left. I remember when Kidwell walked to the back room with Horan. That was when we first went in, after I introduced King to Kidwell. After that incident, Kidwell remained in the place an hour or more.
We were talking during that hour. It wasn't a con-
515 tinual conversation. I had one drink. I think Kidwell had a couple. King had a bottle of beer. Before leaving Kidwell made a purchase of a half pint. I don't know what it was.

Thereupon the following occurred:

Q. What did he ask for?

Thereupon the question was objected to as immaterial and irrelevant; the objection was overruled and an exception duly noted; and the witness continued:

I did not hear what he asked for. I saw the bottle and it was white, as was the contents. I next saw King on the Sunday evening following that incident at 4½ Street in the office of Michael W. Flynn, managing editor of the Washington Herald. Flynn, King, Burkinshaw and I were present. That was the first time I had ever seen Burkinshaw. Later that evening I saw King and Mr. Gordon, Mr. Roberts, Mr. Pomerene, and several other people in the Transportation Building. I do not know whose office it was. I know Mr. O'Leary. Prior to Sunday evening, October 30th, I had not seen any other members of the District Attorney's staff but Burkinshaw. I had not talked with any member of the District Attorney's staff with regard to the incident that took place at 411 4½ Street prior to Sunday, October 30th. I said something about Kidwell stating that Sinclair was a good fellow or a democratic fellow. He said Sinclair comes in and chucks his hat over on the table just like any ordinary person would. That day he did not say anything about lunching in the same place, Sinclair lunched. He said something to me before that about that. I have stated everything that I can recollect in regard to what Kidwell said, and what King said, and what I said in Horan's on October 29th.

Thereupon the witness was cross-examined by Mr.
516 Hoover as follows:

I once went under the name of Peter Smith when I was arrested on the evening of November 5, 1927, or the early morning of November 6, 1927. I was taken to the Police Court and convicted and sent to jail.

Thereupon the following occurred:

Q. How did you get out of jail?

Mr. Burkinshaw: We object, your Honor.

Mr. Hoover: I propose to show by this witness, that after he was sent to jail that he got in communication with the District Attorney's office and they got him out. I say that is a material matter as affecting the weight of the testimony of the witness in the case.

Mr. Wright: I wish to suggest an additional reason, that any cross examination which has the effect, or is designed to show bias on the part of a witness is always relevant.

Thereupon the objection was sustained and an exception duly noted, and the witness continued:

On October 29th I was employed by the Washington Railway and Electric as a conductor on the East Capitol Street line. After I went to the Transportation Building on October 30th, I did not go back to work again. I reported for work, and they said I had been suspended. I had gotten off for ten days, and during that interval I had been suspended. I asked them the cause of it and nobody seemed to know the reason, and I resigned. Since October 30th I have not been on the Government pay-roll. I had not been, within a week or two ago, reporting daily to the office of the District Attorney at 11 o'clock or thereabouts. On occasions when they would tell me to report I would report. I was not directed to report to the District Attorney's office every day prior to December 5, 1927. I do not know
517 how many days a week I reported there. I was home at Gainesville, Virginia for a couple of weeks. I just came to Washington yesterday. I had been away a week. I know O'Leary, of the District Attorney's office. I do not remember exactly when I first became acquainted with him. I remember being in his office on Saturday morning, December 17th, and making a statement to him when Detective Lowry and Kidwell were present. I met O'Leary in a lunch room at 14th and U Streets one evening after I made this statement in his office. I did not at that time tell him that what I had told him about this thing was a lie.

Thereupon the following occurred:

—— Do you remember you talked to him and he called in two policemen?

Thereupon the question was objected to; the objection was sustained and an exception duly noted, and the witness continued:

About 11 a. m. on October 29th I was asleep in that automobile in front of Horan's. I was not drunk. I believe I had one drink that morning. I went down to Horan's a little before eleven. I had an engagement to meet King there at 2 o'clock, when I went there at 11. I went out and sat in the car and went to sleep. I had just woke up before King came up. I was not drunk and sleeping a drunk off. I had not been intoxicated. Nobody waked me up. I waked up myself, just before I saw King about a couple of steps from the car. Kidwell was there then, outside standing out in front of a window. As we went in I spoke to Kidwell. We all started in about the same time. King and I started from the automobile at the curb. When I got near the bar I saw Kidwell there and asked him to have a drink. King ordered a bottle of beer, and drank beer. When I introduced King, I just said, "Mr. King—Mr. Kid-
518 well." I did not tell him he was a reporter on the Washington Herald, nor did I tell him he was a clerk in the Washington Railway & Electric Company. Kidwell asked me afterwards what this fellow did, and I said, "He works over where I work." I don't know when Kidwell asked me that. I believe it was when he came out of the room after being with Horan. When I first went into the place I went back towards the rear of the bar. The first thing that happened, I introduced Kidwell to King. I did not tell Kidwell what King was there for. Then King and I were looking at a newspaper lying on the bar. It was not a Bulletin. We were talking about Laurel and Kidwell went into the back room of Horan's. I do not remember that at that point King had his left hand or elbow on the bar with a roll of money in his hand, and he said to Kidwell, "I wish I had gone to the races today; if I had I could have made a lot of money, but I have a lot of money anyhow"? I don't know how long Kidwell was in the back room. I saw Horan go back in there. Then I saw Kidwell come out. When he came out, I do not recall his asking me who this man was that I had introduced to him. I do not think that I told Kidwell that King was employed by the

Washington Railway & Electric Company. I do not know whether he asked me about that. I might have told Horan that, as he asked me who the fellow was. King did not work where I did. I deny that when Kidwell came out of this back room I tried to engage him in conversation and he told me he did not want to talk to me. Not to my recollection did Kidwell tell me that he could not tell me anything nor talk to me about this case that he was a juror on. King and I did not go to the other end of the bar and leave Kidwell down near the rear of the bar. I went up to the front of the bar once for a few minutes and left King and Kidwell together. I did not go over to the wall and take a bulletin which had racing news on it.

519 I do not know Randle Kidwell. I saw him here this morning. I do not remember having seen him at Horan's that day. I saw Boss go in there. Kidwell had been there an hour or more when Boss came in. I guess Kidwell was there longer than half an hour. I am not certain. I was not paying any particular attention to time. I am certain it was longer than half an hour. I would say it was as much as an hour. At the time Kidwell went out of Horan's, I think he went out alone. I can't say positively. I do not know that he went out with Randle Kidwell. After he got outside, I didn't go to the door and call him. To my knowledge King didn't go to the door and call him. I deny that either King or I went to the door and called him and said that we want him to come back, we wanted to talk to him about something important. I believe he went away in an automobile. I am positive I did not go to the door when he went away. I believe I was standing beside the bar nearer the front, when he went out of the door. I have not at any time ever received any money from King, or the Washington Herald, or Mr. Flynn, the manager of the Herald. I have never received any money at all. I first met Burkinshaw on the evening of October 30th at the office of the Washington Herald. King, Burkinshaw, Flynn and I were present. We, with some other gentleman whose name I do not know, then went to the office of the government special counsel in the Transportation Building. This other man was at the Herald. He took us up in automobile. I believe I was introduced to him, but I do not recall his

name. I have not seen him since. I went in some office in the Transportation Building, and there met Major Gordon, the District Attorney, and Mr. Roberts and Senator Pomerene, the special government counsel. I first met King about 7 a. m. the 29th. He came down to where I
520 roomed, at 206 7th Street, S. W. I did not know him. He satisfied me who he was. I made an engagement to meet him that afternoon at 2 o'clock. I was meeting him at 4½ Street to introduce him to Kidwell. I then knew that Kidwell was a juror. I did not introduce King for the purpose of having King talk to Kidwell about the case. King said he wanted to know who this fellow was, he had been talking, and I told him Kidwell had been talking, and I could introduce him to him. I merely introduced him so that he could see who the man was. I have never been convicted of any other offense.

Thereupon the witness was cross-examined by Mr. Wright as follows:

I know two assistants to the District Attorney, O'Leary and Burkinshaw. I know Shea, so I know three. I was sentenced to jail for ten days. The fine was $10, and I didn't have it. I was sent down for ten days by Judge Schultz. I was in jail five days. I got out on Wednesday.

Thereupon the following occurred:

Q. Did you see Mr. Shea that day?

Thereupon the question was objected to, the objection was sustained and an exception duly noted; and the witness continued:

I have been paid witness fees in connection with my attendance about the court house since October 29.

Thereupon the following occurred:

Q. How much?

Thereupon the question was objected to, the objection was sustained and an exception duly noted; and the witness continued:

When King came to see me at 7 a. m. on October 29 at my house, I did not talk over going to meet Kidwell that

afternoon, and to meet him at Horan's. I think King said that as we were going down the street from my house. He wanted me to introduce him to Kidwell. He didn't
521 say anything about having a talk with him. King and I did not talk over whether or not it was a lawful thing, or safe thing to try to talk to a juryman when a case was going on. Not a word was said on that subject. I don't believe I told King whether I would be inside or outside of Horan's, at 2 o'clock.

Thereupon the following occurred:

Q. Did Horan always keep his automobile out in front during the day time?

Thereupon the question was objected to as not being proper cross examination; the objection was sustained, and an exception duly noted; and the witness continued:

It was shortly after I got into Horan's barroom that Kidwell went into the back room. That was before he came out and told me all those things about the case. I am sure about that, and that Horan went back into that room with him. I don't recall exactly what King said in that conversation. I don't know anything he said. I was as close to King as I was to Kidwell.

Thereupon the following occurred:

Q. You could hear as well what he said as what Kidwell said, could you not?

Thereupon the question was objected to as argumentative, the objection was sustained and an exception duly noted; and the witness continued:

I left King and Kidwell at one part of the Bar and went up front by myself because I wanted to get a race result. I asked Horan who had won the second race. I went back and had a further talk with Kidwell after that. Kidwell and King were along together while I was up at the other end getting the racing information. After I rejoined King and Kidwell after this, I stayed in Horan's an hour or more. Kidwell left first. I don't remember whether he said good bye, or anything like that. It wasn't long
522 after Boss came in before Kidwell left. I don't know whether he left alone, or with someone.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

When I arranged with King to go to Horan's I did not make any arrangement with Kidwell to meet me there. I went there for the purpose of seeing Kidwell. He frequented that place. I did not know from King on what subject he wanted to talk with Kidwell. I don't know whether King knew, when I took him down to meet Kidwell at Horan's, that Kidwell was a juror in the Sinclair-Fall case. I knew that Kidwell was a juror at the time I took King over to see him. I did not know that the Judge, the very Judge presiding here, had given instructions to everybody not to talk to the jurors. I hadn't read it in the newspapers. I did not know that it was a wrong thing for me to do. The conversation that resulted from my introduction of King to Kidwell was on the subject of this case, about Mr. Sinclair, about money, about automobiles, and so forth. That conversation took place on Saturday afternoon, the 29th. The next evening I reported that conversation to Burkinshaw, because he was Assistant United States Attorney. I did not think it was a wrong conversation to have. I reported it to Burkinshaw because he was an Assistant United States Attorney. That is the only reason I have. Burkinshaw took me to the office of Mr. Roberts. The affidavit written up and signed by me was made in the District Attorney's office.

Thereupon the following occurred:

Q. You were never prosecuted for contempt of court for what you did, were you?

Thereupon the question was objected to, the objection was sustained and an exception duly noted; and the
523 witness continued:

Nobody, before or after I made that affidavit, promised that they would not prosecute me for contempt of court, or anything else. I have no agreement with anybody. I took this matter up with King before I took it up with the District Attorney because I did not know what the method of procedure was, what was to be done about it. My idea was to get in touch with somebody that knew what to do, so I

took it to the newspapers first. I took it up with a Mr. Sack of the News before I took it up with the Herald. I did not ask to be paid for the story.

Thereupon the witness was further cross-examined by Mr. Wright as follows:

I went to the Herald office with King, the night I went there, I saw Flynn and Burkinshaw there. Burkinshaw was not there when I got there. I do not know whether he was sent for while I was there. He came in while I was there. I was working and King came over. He was waiting at the barn when I got off work. I went directly to the Herald office. That was Sunday, October 30th.

Thereupon **Paul M. O'Neill** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am 28 years old and I reside at East Orange, New Jersey. I am employed by the Burns Agency in the New York office, and have been so employed since July, 1927. I arrived in Washington on October 19th, in the course of my duties. I remained until October 25th and returned to New York. I came to Washington again under subpœna, and remained approximately a week. In connection with the present case I came to Washington on December 5 in response to a subpœna, and have been under subpœna ever since. When I first came to Washington on October 19, I was detailed to shadow jurors empaneled in the
524 Fall-Sinclair case, then on trial. In the course of those duties, I made written reports for each day I was engaged. Most of the time I delivered them to O'Reilly. I believe they finally reached Ruddy.

Thereupon the witness was handed Government's Exhibits 197, 208, 222, 236, 252, 267, 281 and 293 which he identified as being his handwritten reports, which to the best of his ability contain a correct representation of his activities during the period when he was engaged here.

Thereupon the witness continued:

I received instructions from Scanlon in the New York office about 5 p. m. on the 18th that I was to go to Wash-

ington. He instructed me that I would go down there and shadow a juror in the Fall-Sinclair case who would be designated to me by Ruddy. He gave me general instructions as he always does that I was to shadow these jurors and under no circumstances was I to approach or come anywhere close to a juror at all, and under no condition talk to a juror, and if a juror attempted to approach me I was to get out of his way as quickly as possible. Scanlon is manager of the New York office and known as T. A. S. My designation was O-3. I arrived in Washington the morning of Wednesday, the 19th, and met Ruddy at the Union Station. He instructed me to register at the Capitol Park Hotel and he would give me instructions later on. I received a telephone call from Dwyer, who was at the Commodore Hotel. He told me to come to his room. I went there and met Ruddy, Robbins, Dwyer and Brennan. Ruddy instructed me there to place under surveillance Kern, a juror in the Fall-Sinclair case. He instructed me the same as Scanlon had, only he was more emphatic. He told me under no conditions to approach a juror or to talk to him, and if the juror attempted to talk to me or to ap-
525 proach me to get out of his way immediately, to run if possible. He gave me a slip of paper, giving Kern's house address, 1315 North Carolina Avenue, N. E., the number he was designated on the jury panel, No. 1. I am not positive, but I think it gave his occupation, a baker, and said he was single. I do not think it gave his place of business. I came down to the court house about 2 o'clock. I got in the court room about 2:30 and remained until Court was adjourned for the day. I sat back in the last bench. I was able to get a designation on my juror. There was not as much information about Kern on the paper Ruddy gave me as there is in Government's Exhibit No. 1. I left the Court by the main door and walked to the front, and down the street, expecting that the juror would come out through the front door, but I afterwards found out he went out the back way, and I lost him as a result. I went to his home and kept it under surveillance until about 9:45. I did not at any time see anyone around that looked the least suspicious. I have engaged in shadow before on a number of occasions. On the 20th I left the hotel around

8 a. m. and went to Kern's home. Around 9:15 he came out, took a street car and went to the court house. I followed. I do not know whether I went back to the hotel or not after he was in the court house. But at 12:45 he came out with Juror Herzog. They walked to Watts Restaurant on the corner of 5th and E and had lunch. They came out about 1:05 and walked back to the front of the court house and entered Court about 1:25. I do not recall whether or not I saw any of the other agents about the courthouse at that time. I did not go into court during the afternoon session. Kern came out around 3 with Herzog and they had their picture taken with the rest of the jurors at Marshall Street and D. Then they walked down to 3rd
526 and D and entered a Ford Coupe, driven by Herzog. I was unable to get a cab and I lost them. I took a trolley to Kern's home and stayed there until 9:45 or 10. Then I returned to my hotel. I saw no one of any suspicious nature in the vicinity of subject's home. That night I received instructions of Ruddy by O'Reilly in my room in Robbins' presence that I was to give Merritt a designation of my subject. He did not tell me why. He said Merritt would give me a designation of the juror he had under surveillance, Goucher, No. 10. On the 21st, I left the hotel around 7:30 a. m. and went to Kern's home. He came out about 9 and went to the court house. When I say I went to his home I mean the vicinity of his home. I do not think I ever came within half a block of his home. At 12:45 when the jurors came out for noon recess, I pointed Kern out to Merritt. I was only in the court room on one occasion. Merritt and I were on the other side of the street. He gave me a designation of Goucher. Goucher and Kern did not come out together. I left Merritt and followed Goucher. He went to the Benedict Lunch Room at 6th and Pennsylvania Avenue. He came out and proceeded back to the court house. I went back to the hotel, and when I came back at 3 I found that the jury had been dismissed for the afternoon. I went to Goucher's home at 1408 Franklin Street. I received that address from Merritt. I stayed there until about 10:30, and I didn't see the subject at all. His home is in the suburbs and there are very few houses there, and a person staying around in the vicinity any length of time without being conspicuous and being burned

up. I returned to my hotel. I received a phone call from Ruddy around midnight. He told me to go to O'Reilly's room in the Mayflower; that he would be there. I knew the number of O'Reilly's room. I don't think I had been there before. I was there a half hour. I don't recall
527 exactly who was there. Most of the operatives were there. I remember O'Reilly, Robbins, Ruddy, Klein, Brennan, Merritt and Dwyer being there. I am not sure whether McMullin and Stewart were there. I was instructed by Ruddy to have Brennan accompany me Saturday morning to this juror's home to see if we couldn't find out his place of business. I left a few minutes after this. I might have been there 5 minutes or 20 minutes before I received those instructions. I don't know whether any other operatives got instructions on that occasion. There was nothing particular going on. They were just sitting around talking about different things. I got no other instructions there. As it was Saturday we wanted to keep the man under surveillance all day, and as his house was in the suburbs it was hard for one man to do. Everything that Ruddy said to me on that occasion was that I was to meet Brennan in the morning and he would go with me to Goucher's home. Ruddy gave me those instructions in the presence of everybody. He didn't try to hide or conceal his conversation at all. I think most of the operatives went there for money. I don't know whether they were telephoned as I was. When I was there I got some money. I don't remember how much, $30 or $50 or $60. I don't know how much money I got on this operation. I received most of my money for my services here in Washington, and the balance of a few dollars when I arrived in New York. I don't think they knew where Goucher worked. I think Merritt told me he was a vulcanizer. On the 22nd I met Brennan around 6:30 a. m. near the Capitol Park Hotel. We went to Goucher's home. Around 7:45 Goucher drove out in a Ford delivery truck, with "W. S. Kenworthy, 1617 14th Street, N. W." written on both sides and license number

B-4731. We followed the car to 1617 14th Street, where Goucher parked it and went over to a gasoline station
528 and automobile accessory shop. In a short while I called Ruddy and he instructed me to stay there alone and have Brennan go to his hotel. Brennan left. Goucher left the shop about 6 p. m. and drove home in the same Ford delivery car. He didn't come out again. I stayed there until 11 or 11:30. My report states that Brennan was with me. On the 23rd I left the hotel about 6:30 a. m. and went to Goucher's home. This was Sunday morning. Around 10 o'clock he drove out in the same car, the Ford delivery. I was in a cab and followed him. I don't remember the exact streets he went down. I was on Rhode Island Avenue where I could see his house, as there is a vacant lot between there and his home. I was there when he came out. He continued on Franklin Street and I continued after him. He turned, and I continued past him. He stayed there a few minutes and continued on himself. He made a righthand turn on one of the streets, and I turned around and followed him, and he rode down some other street. I continued down to that street, and when I got down there his car was stopped, so I continued past that street. Then I discontinued on him and called O'Reilly. I wasn't certain as to whether or not he knew I was following him, and I wasn't taking any chances. I called up Ruddy first. I didn't say anything to him. I told him I wanted to see him, and I guess he realized what I wanted to see him about, so he told me to see O'Reilly at his room. I proceeded to O'Reilly's room. I told O'Reilly exactly what happened. I don't think I told him anything else. I did not use the phrase "burned up." I don't think I told O'Reilly that I had better drop the man. I had dropped him for the time being. I don't recall whether I told O'Reilly that "knowing that the subject knew that he was being followed by a cab I dropped him." I don't
529 think I said it. I went to O'Reilly to tell him what happened. I *do* not go to tell him I thought that I had been burned up. I went there to get his opinion as to what I should do. O'Reilly said to me, "If you think that the subject knows he is being followed, drop him, but be absolutely sure that you know that, and if you think you

are wrong, continue on him and do the best you can." I continued on him. Later that day I wrote a report. I don't think I reported, either verbally or in writing that day, that I was satisfied that Goucher didn't know that he was being trailed by me. I reported that day, "and I had to continue on 13th Street knowing that subject knew he was being followed by cab I dropped him and reported to Mr. O'Reilly who in turn told me to continue and do the best I could." On the 24th I came to the court house about 12 or 12:30 and waited across the street. Goucher came out at 12:45 and went to the Benedict Lunch Room. He came out and went back to the court house. I remained there until 3. He came out of the court house then in company with another man, whom I did not know. They both walked down to 3rd and D and entered a Ford Coupe with the name "American Ice Company" on the side, which was driven by this man. I could not get a cab to follow, so I went to Goucher's place of business on 14th Street. He was in the shop. He left there about 6:25, driving the same Ford delivery car he had been in before, and drove to his home. I remained in the vicinity of his home until 11 or 11:30 and he did not come out, so I left and returned to my hotel. On the 25th I was ordered back to New York by Ruddy. I was not told why I was being sent back. I received those instructions in my room at the Capitol Park Hotel around noon. O'Reilly and Robbins were also present. I know Dwyer and Brennan were also sent back to New York. I do not know whether or not the Philadelphia men were sent back. I was present when they received their in-
530 structions. Ruddy told me I was to go back to New York, and he was satisfied with the work I had done while here in Washington. That is all he said. O'Reilly said goodbye. Brennan and Dwyer returned to New York with me. Brennan is in the same office with me in New York.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

I was absolutely not paid any more for my work here than I was paid anywhere else. I received the same exactly, a regular per diem and expenses. The reason I

stopped following Goucher on Sunday and went to see O'Reilly was because I wanted to be on the safe side; I did not want him by any chance to believe that I was shadowing him. After I resumed my operations on Goucher nothing happened that made me consider discontinuing shadowing him. I sometimes used the expression, "I went to his home," and "I took a trolley to his home," and "I proceeded to his home." In each instance I meant that I went to the vicinity of the home, instead of going to the home itself. I absolutely did not go to the home of any juror at any time. My services were discontinued on October 25th. Quite a number of other operatives went back at the same time I did.

Thereupon the witness was examined by the Court as follows:

On the 24th I took up the surveillance of Goucher when he came out of court at noon recess. My surveillance of Goucher ended the previous night at about 11:30. I was instructed by Ruddy to pick him up at noon instead of the morning. I had a cab pretty near all of the time that I was on this job. On the 23rd I saw Goucher come out of his home and enter the car at 10 a. m. He commenced driving and then I began following him in my cab. I had
531 a cab parked on Rhode Island Avenue and he was on Franklin Street. Those two streets are parallel to each other at that point, with a vacant lot between, so that one can look straight across. He had proceeded down Franklin Street, and I went down a side street and made a left hand turn and got on Franklin Street. He was ahead. I rode up 150 or 200 feet, when I saw that his car had stopped. At that particular spot there were houses on both sides. I told my driver to continue right on. He was in his car when I passed it there. I drove a block and a half past the spot he had stopped; still on Franklin Street. In a few seconds after I had passed him he started his car and went up Franklin Street in the same direction he was going. He then made a right hand turn down the first side street he came to; a street that I had passed. When I saw him make this right hand turn, I stopped the cab, went back down the middle of the street over the same route I had travelled, and made the same turn he had

made. I followed him 4 or 5 blocks when he made a left hand turn into some street and disappeared out of sight. When I got up to this street I noticed his car parked right near the corner where he turned in. I continued on and discontinued the surveillance of him. I do not think it was a minute from the time I saw him turn into this next street until I reached there. As I went by there I did not see him, I saw the car, and instead of turning into the street I continued on past. I abandoned the surveillance then for the time being, and reported back to Ruddy. I could not say whether he had left the car. I did not bother looking, but just kept on. It was at this point that I abandoned the surveillance. I did this because he had stopped and because of the instructions I had received when I first started in on the shadowing. I was not taking any chances, and I thought I had better call Ruddy and find out what
532 he thought about it. When Goucher left his residence on this occasion and I began to follow him in my cab, he stopped. I afterwards realized that it was my imagination that he turned around.

Thereupon **Paul D. Steer** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 237 W. 31st Street, New York City. I am 24 years old, and an operative of the Burns Agency. I have been so employed for 3 years. I came to Washington on October 21st in pursuance of my duties as a Burns agent. I have been here ever since, under subpoena since October 30th. I was called into Sherman Burns' office in New York and told to pack my bag and proceed to Washington and report to Ruddy. I received no instructions in regard to my duties. I was not told that I was to work in connection with the Fall-Sinclair case. I had seen Ruddy once before. I met him at Wardman Park. In connection with my duties here I made out daily written reports of what transpired during the day.

Thereupon the witness was handed Government's Exhibits 241, 257, 271, 285, 296, 302, 308, 189, 168 and 166, which he identified as being his handwritten reports from October 21 to 30, inclusive.

Thereupon the witness continued:

O'Reilly used to come around and get those reports until at a later date I used to bring them down to him. If I met him in the street, or if he came to the hotel, I would give him the report. I never took them to him at the Mayflower or at Wardman Park. I did not shadow any of the jurors. I shadowed Burr, in connection with the Sinclair-Fall case, at the instructions of Ruddy on the 25th.

533 I operated under the designation of S 81. I left New York on the 21st, and got in touch with Ruddy and O'Reilly at Wardman Park. I received data on Robert C. Flora, Juror No. 12; his name, address, religion, and the fact he had a stepdaughter about 18 years old. I do not recall whether I was given a slip of paper with a designation of him on it. A copy of the information on Flora in Government's Exhibit 1 was not shown to me. I was told he was a Protestant. There was no personal sketch of him given me. O'Reilly gave me the information and I wrote it down. I do not remember whether or not he had a paper in his hand. I was told to shadow Flora. The 22nd I was told by O'Reilly at my hotel about 8 a. m. by phone not to shadow Flora. He told me to wait at the hotel for further instructions. I had not started on Flora. I do not know whether or not Flora was followed. O'Reilly gave me no reasons for discontinuing on him. Ruddy did not call me in that connection. At 10:15 I received another phone call from O'Reilly. He told me to go to the vicinity of Holmes Bakery and join Merritt and Dwyer. I was told to try to get a designation on Kern's brother-in-law, whose name I do not remember. I was just told to go down and get a spot from Merritt and we were to shadow the brother or brother in law. I saw Merritt. Dwyer was the only one with him. I tried to get a designation. I am not sure whether it was Kern's brother or brother-in-law. I was not told he worked at Holmes, and I did not have a photograph of him. Merritt just said I was to get a designation on him when he came out. I do not know what Dwyer's instructions were. I imagine they were the same. I was not shown Government's Exhibit 1, about Juror Kern. Ruddy gave me no information and no description of Juror Kern. I arrived in the vicinity of the bakery

about 10:30 and remained until 8:30 that night. Shortly after I arrived there Merritt gave me the designa-
534 tion on the man. He just said: "There he is." He got into an open Lincoln car, N-5259. It was not until after 1 p. m. that I found out that this man was not Kern's brother. Merritt told me. He called up O'Reilly and found out. O'Reilly did not come to the Bakery that day. I think Merritt told me he had phoned O'Reilly. All Merritt said was that that was not the man. I had received instructions before I left the hotel to follow this person if I could get a designation on him. When Merritt gave me the designation I did not follow him. He did not go away. He got in the Lincoln for 3 or 4 minutes and then got out and went into the bakery. He did not come out of the Bakery up to 1 o'clock. We didn't notice him after that. I remained there until about 1:30. I did not leave at that time. At 8:30 Kern came from the Bakery by himself and entered a Chevrolet and drove off. I have seen Kern in the court room. I didn't get the number of the Chevrolet. We tried to get a cab to follow, but couldn't, so we walked up the street until we did get one. We went to 13th and North Carolina Avenue and remained in the vicinity of Kern's house until about 9:20, when a Hudson car drove up to the house, and Kern and three other men, whom I don't know, left the car and entered the house. We stayed there until about 11. No one came out of the house, and we didn't see Kern again that night. When we proceeded to 13th and North Carolina Avenue from the Bakery we were going to the vicinity of the juror's house. I had not received any information at that time as to where the brother lived. Merritt did not tell me that he had received any such information. Merritt did not give me the name or address of the brother. I don't know what his name is. Aside from what Merritt told me, I had not learned at that time from any other source where the juror lived. We went to the Mayflower at 11 on a social
535 visit. We did not have any instructions to go there. We went to O'Reilly's room and got there about 11:30 or 11:45 and stayed until one. O'Reilly, Dwyer, Merritt and I were there. I don't remember any other Burns men coming. Ruddy and Robbins were not there. We talked about different subjects social, football, baseball,

and O'Reilly told me to hold myself in obeyance at the hotel the following morning for further instructions. I had not been at the Mayflower the night prior to the 22nd. On this occasion I don't remember any mention made on the part on any one of us in the room about Kern's brother or brother-in-law, or about Kern, or about the operations of the day. I made out a report for that day the following morning. I didn't know whether any of the other operatives made a verbal report. I went to O'Reilly's room in the Mayflower about twice. I do not remember the other occasion. It was after this occasion on the 22nd. I don't remember how long after. I don't remember O'Reilly instructing me to get something on Kern's brother. The only thing he told me was to hold myself in obeyance at the hotel the next morning. I don't remember O'Reilly saying that Kern's brother was a gambler around town. I don't believe he said that to me on any occasion while I was engaged in this operation. Ruddy did not tell me that at any time while I was engaged on this operation, nor did he at any time tell me that he wanted me to get something on Kern's brother. None of my fellow agents conveyed any such instructions to me at any time while I was engaged on this operation. Thereupon Mr. Burkinshaw announced surprise at this testimony and asked permission at this time to cross-examine the witness as to his prior testimony, to which objection was made, which was overruled, and an exception was duly noted.

536 Thereupon the following questions were asked by Mr. Wright:

Q. Since you testified before the grand jury, have you or have you not had a talk with Mr. Burkinshaw, or Mr. O'Leary, or any other one in the District Attorney's office on the subject of whether or not you had received such instructions? A. Why, I was in Mr. Burkinshaw's office, but we didn't talk on that subject. It was just mentioned.

Q. Were you in conference with anyone else except Mr. Burkinshaw, on the prosecutor's staff, since you testified before the grand jury? A. Only Mr. Burkinshaw.

Q. Did you talk to him generally about what your evidence would be?

Thereupon the question was objected to, the objection sustained, and an exception duly noted.

Thereupon the witness continued in direct examination:

I appeared before the grand jury some time during the months of October, November, and December of 1927. I do not remember whether or not I appeared before the grand jury on November 11, 1927. On the occasion of my appearance before the grand jury, I don't remember if I made the following reply in answer to a question by Mr. Burkinshaw.

"Q. Mr. Steer, what information, if any, did you get on the occasion of that Mayflower conference at midnight October 22nd with regard to Kern's brother? A. I was told he was a well known gambler around town."

I may have said it, but I don't remember it. I was asked a lot of questions in there. On that occasion I do not
537 remember saying anything at all about Kern's brother being a gambler.

Thereupon an objection was made to using this for the purpose of refreshing the witness' recollection, or for cross-examination, the objection was overruled and an exception duly noted.

Thereupon the following occurred:

Q. Now, state whether or not on that occasion you were asked this question and gave this reply:

"Mr. Steer, state, if any, what instructions were given on the occasion of that Mayflower Hotel conference on October 22nd with regard to Kern's brother?"

And thereupon your reply was:

"I was told to get something on him."

Mr. Wright: I object to that, on the ground that it is collateral to the issue and, therefore, could not be the subject of impeachment.

The Court: Overruled.

Mr. Wright: Exception.

Thereupon the witness continued:

The only thing I remember was that O'Reilly told me to hold myself in abeyance the following morning. I don't remember any other instructions that were given. I don't remember that I was told that. I don't remember whether or not I so testified before the grand jury; I was asked so many questions. I don't want to say. I am not sure. I don't know what happened to me on that occasion. I arrived at the Maytlower at about 11:45 on that occasion and left around 1:00. Nothing else took place besides what I have stated. There was no further discussion of the operation in progress. It was just more of a social call. O'Reilly told me just to await further instructions. I did not have anything to do the next day, no assignment.

538 On Sunday, the 23rd, I received a phone call from O'Reilly about 9 a. m. at the Pennsylvania Hotel. He told me to go to the Plaza Hotel and wait in Brennan's room until he came. I received no instructions from Ruddy that morning. O'Reilly came to the Plaza about 1 o'clock. Brennan was there. O'Reilly gave me a license number, N 5259 and the address of G. J. Vogt at 1411 North Carolina Avenue. He told me this car belonged to Vogt. 1411 North Carolina Avenue is about three blocks away from Juror Kern's home. I went out there and found Vogt had moved about six months ago to 1317 North Carolina Avenue, next door to Juror Kern. I learned from a lady who lived two doors from 1411 North Carolina Avenue that Vogt had moved. I went up and rang her door bell and fell into a general conversation, and gradually led her around to the Vogts. I asked her about real estate values in that neighborhood. I did not tell her my name or business. I did not ask about the price of Kern's house. We were talking in a general way, and then we got talking about the Vogts. She said, "Well, Mr. Vogt moved away from here six months ago, and he sold to the people who now occupy it for $7,750." I was by myself. I asked her if she knew the people in 1411, and she said she did not as they were new people in the neighborhood. I just said, "How are real estate values around here?" She asked me if I was thinking of buying a house, and I said that possibly I might, but I wanted to know what the values were. We talked along that line, and I asked her if she happened

to know a family by the name of Vogt who used to live at 1411. She said they were good friends of hers, who had lived there for 8 or 9 years. I asked her what Vogt was doing now and she told me that he was freight agent for the B. & O., and worked with the Government at night as an accountant. She did most of the talking. She said he made $1,000 in four days during the influenza epi-
539 demic shipping bodies through. O'Reilly gave me no information about Mr. and Mrs. Vogt. He sent me there to get information. I left the lady and went to the vicinity of Vogt's home in order to get a good flash at him in case anything should come up later on in the operation concerning him. In case they wanted me to shadow him I would know him. O'Reilly had said nothing to me about the necessity of shadowing Vogt. He did not know anything about it. I do not know what relation Vogt had to the case. O'Reilly did not ever tell me that Juror Kern's sister had married a man by the name of Vogt, and I never knew it. He gave me no explanation as to why he wanted me to go over and look up the Vogts. I do not know the name of the woman I talked to on this occasion. Her house was on the same side of the street as 1411, and two doors away from 1411, away in the direction of the Capitol. I interrogated one or two neighbors of the Vogts in addition to this woman. I do not know their names, or street addresses. The first place I went to I asked if the Vogts lived there. I knew they did not. I did not tell them who I was or what my business was. I did not have any conversation. If they said no I would go away. If they knew the Vogts they would tell me where they were. I did the same thing at the second place I went to. I would say that I wished I knew where the Vogts lived as I was very anxious to get hold of them. I did not say why I wanted to see the Vogts. That is the strong pretext I have reference to in my report. Aside from this woman, neither of the other two persons I talked to gave me any information about Vogt or Kern. The name of Kern was not mentioned at the places I went to. When O'Reilly gave me Vogt's address and car license he did not tell me where he got that information. I knew the night before that the Vogts did not
540 live at 1411 North Carolina Avenue, but lived at 1317, next to Kern. I had been in that neighborhood the night before. The transactions of this day do not bring

back to my recollection anything further with regards to the instructions I had received the night before at the Mayflower. My first information from O'Reilly about the residence of Vogts came at the Plaza Hotel in Brennan's presence. The woman near 1411 gave me the information that Vogt is thought by neighbors to be fairly well fixed as to money. By neighbors I mean that woman. At the time I got my instructions from O'Reilly I was not told to get a complete report as to the financial condition of Vogt. I just got it to get general information. O'Reilly did not tell me what kind of information he desired on the Vogts. I stayed in the vicinity of 1317 North Carolina Avenue until 9:40 p. m. There was no other agent with me. I was watching just Vogt's house, and not Kern's. I did not see Kern that night. I was not looking for him but for Vogt. I did not see Vogt. My instructions were not to remain there and cover Vogt on that occasion. I did that for my own information. On Monday, October 24th, I left the hotel and started operations at 10 a. m. I did not see Ruddy, or get instructions from him over the phone. I think O'Reilly phoned me, but I do not know at what time. He told me to get Brennan and the two of us meet him at the District Building. I got Brennan and we were walking up Pennsylvania Avenue when O'Reilly and McMullin picked us up in McMullin's car, a green Chrysler, and took us to the District Building. We all went in. O'Reilly went up to get some car license numbers and Brennan, McMullin and I stood talking. We were there about half an hour. I did not look up any license numbers. McMullin told me he had turned in a license number, P-1738, the night before, and asked me to let him know as soon as I found out who the owner of this car was, as he was very anxious to
541 know. O'Reilly told me to go out and get information on this car P-1738, which belonged to H. R. Lamb. My report states that Lamb is also a special assistant to the District Attorney of the Department of Justice. O'Reilly did not tell me that. I found it out in a City Directory at the Raleigh Hotel, which said he was Special Assistant to District Attorney, Department of Justice. I do not know whether I could identify that directory. My report also says "that he also was employed in the Department of Justice, 1001 Vermont Avenue." The Directory did not say Lamb held two jobs, one as special assistant to the dis-

trict attorney and the other as an employee of the Department of Justice. I meant in my report that Lamb was a special assistant to the District Attorney and also had any job in the Department of Justice. I do not know if this 1927 Directory is the same type book I looked at or not. In some ways it resembles the book I looked at, and in some ways it does not. This book says, "Horace R. Lamb, Special Assistant to Attorney General, Justice Department." This is not the same book. To the best of my recollection the book I looked at said, "Lamb, Special Assistant to the District Attorney," and not "Special Assistant to the Attorney General." After I got this information I called up the Department of Justice and asked to speak to H. R. Lamb. Then a voice came on the phone and said, "Lamb talking," and I hung up the receiver. I just wanted to corroborate the fact that this was the same Lamb. I didn't speak to Lamb at all. While engaged on this operation I called a person, got him to answer, and then hung up just once. I went to the Department of Justice first and waited there until 6. Then I went to the Racquet Club. The Directory gives that as his address. I did not have a designation of Lamb at that time. I just had to look for
542 the car P-1738. I did not see Lamb at all that day.

I reported to O'Reilly just what I had done that day. On the 25th I received a phone call from O'Reilly telling me to hold myself available at my hotel. About 1 o'clock Ruddy and O'Reilly came there and told me to pack up my things and move over to Wardman Park. I did this. That evening I was told to go to 1749 18th Street, N. W. and look for a Chevrolet car, license No. P-993, which Charles Burr owned. I have seen Burr since that date. I stayed around there until 3 a. m. Between 9 and 11 an elderly lady came out. No one else came out. Charles Burr was not a juror in the Fall-Sinclair case. I was instructed just to shadow him. I was not told why. I was told he worked at Cafritz Real Estate Company, 14th and K. I was not told what, if any, connection he had with the Fall-Sinclair case. I think it was one of McMullin's connections. Some operative turned in the number of his car. My recollection is it was McMullin. About 11:35 a man came out of the house, 1849. The car was parked on the west side of 18th Street, facing south. This man got in the car and

went down 18th Street. I couldn't follow as I didn't have a cab. He came back 10 minutes later and went in the house. I saw the lights go out about 12:30. On the 26th I went to the license bureau and got a D. C. driver's license. I then went up to the vicinity of Cafritz, looked around for the car, but didn't see it. I made several trips between Cafritz and Burr's home. I picked up the car about 6 p. m. at 1749 18th. Burr came out about 8:15 and drove to 1447 Chapin Street, entered, came out about an hour later and drove with this man to the Arcade Bowling Alleys. My report of that day is true and correct. I was given Burr's license number and told to look in the vicinity of his house. I was given no description of him. I had to use my judgment as to whether the man who got in
543 the car was Burr. I had no knowledge as to who Burr was, or what he looked like or anything beyond the fact I had this license number. On the 27th Burr was my subject. About 3:10 I located Burr's car at the corner of 14th and H. I stayed there about 20 minutes, and saw him enter the car and drive to the Evans Building. He parked his car and went in the building. He came out in a half hour and drove to the post office on 14th Street, came out of there directly and drove to the Colorado Building. He came out of there about 5:30 and drove to his home. He came out about 8:20 and drove to 1447 Chapin Street. He went in and remained until 9:45. On the 28th Burr was my subject. I picked him up at 4:30 p. m. His car was parked on K near 14th. He drove to the Brown Real Estate Company, came out in 10 minutes and drove to a pool parlor on H near 7th. He came out of there at 5:30 and drove home. At 8 p. m. he came out with an elderly woman and a young woman and drove them to Keith's. The two women went in Keith's, and I lost him. On the 29th Burr was my subject. I picked him up, located his car at K and 14th. He drove home. He came out about 3 or 3:30 with his wife and two children, and they went up to Buchanan Street, and came home about 6. I don't think they did anything else. He did not go out that night. On the 30th Burr was my subject. I saw him the first time at 11 a. m. coming from down town in his car. He parked his car alongside the house and then drove out to Petworth, returned at 6, went in the house, came out at

6:30 and went back to Petworth, remained there till 9, and then drove back to the house. He did nothing else that day. In my report of Saturday the 29th I have the following:

"At 4:45 p. m. subject, his (assumed) wife and child, came from the house, entered the car, and drove off north 16th Street, N. W.

544 "Subject drove slowly, keeping at about 15 miles an hour, for about a half a mile. On the way out, I noticed a Chevrolet Cabr-olet keeping behind subject's car, this car's license number is D. C. R-1340. When they got to a section of the road where traffic was light, both cars stopped and subject and man driving the cabr-olet left cars and joined each other, standing behind the cabr-olet. They held a conversation for about 10 minutes, smoked a few cigarettes, then entered their cars and drove off. I noticed at this point, that the subject soon distanced the man driving the cabr-olet."

This incident took place. It was Burr. I can't say that I ever saw Burr smoking on the occasions that I trailed him. In my report I said I thought they were smoking. I wrote the license number R-1340 down on a slip of paper. I am fairly positive that is the number of the car I saw the 29th. I could have been mistaken. I was 600 feet or so from the car. Sometimes I would be closer, according to traffic. I must have been pretty close to have read the license tag. The man driving this car was about 5 feet 6, with dark clothes, which could have been brown or black, I wasn't close enough to notice. I don't remember his hat. There was a woman with him. She remained in the car. Burr's wife did not get out the car. Just the two men left the car and walked around back. One car was parked back of the other. Burr's car was first. The Chevrolet had followed Burr's car out there. This meeting was between 1620 Buchanan Street and Burr's home. It is a country like district. The Chevrolet looked like a 1926 model. It was pretty dirty. I think it was gray, with gray wheels. I don't remember the top. It was a Cabr-olet. I cannot describe the woman who was in this car. I don't know
545 whether she was young or old. I turned in the license number of this car. I put it in the report. I don't

know whether anyone ever looked it up. I think I made an inquiry, but I don't know whether or not I ascertained whether or not there was such a license number existant at the time. I would have inquired of O'Reilly if I had inquired. I may have asked him whose car it was. I did not report that incident verbally to O'Reilly. This interview between Burr and the other person lasted approximately 10 minutes. It looked in the distance as if both were smoking cigarettes. In the report I was not particular, I just said they were smoking cigarettes. In the distance I couldn't tell whether they were both smoking or not. I don't think there were any other cars parked nearby. I didn't take very much notice. It was rather secluded spot along the road. The 31st was the day of the raid of Wardman Park. I had not been working that morning. I didn't do anything with regard to the operation that day at all.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

I shadowed Juror Kern just Saturday morning. I went to the vicinity of his house that evening with Merritt and Dwyer. I was never closer than half a block to his house. The closest I ever was to Juror Kern was about half a block when I saw him get out of the Hudson car. I did not speak to Kern at any time. I was given instructions if any of the operatives ever talked to a juror they would be sent back to New York and dismissed. I do not know why I was instructed to make inquiries about the Vogts. I don't remember any information given me that Kern had been seen in Vogt's car. All I did was to follow O'Reilly's instructions to find out something about the Vogts. He didn't tell me anything about them. I was not instructed
546 to find out anything about their financial condition. I just wanted to get a general knowledge of who they were and what they did. The name of Kern was not mentioned at all. I first went to 1411 North Carolina Avenue to find Vogts. I thought they lived there. I found out from this elderly woman from whom I got this information, that they had moved to 1317 North Carolina Avenue. When I went out there to do what O'Reilly told me, I did not know they lived at 1317. He told me they lived at 1411. I only asked about them in a general way. I was asked by Burkin-

shaw about making verbal reports on the night of October 22. No reports as such were made at all, but it was just a social visit. I am a good friend of O'Reilly, Merritt and Dwyer, and we just got together and talked; that is all. I did not try to get anything on Kern's brother. The only think I had to do with him was what I did on Saturday morning, the 22nd. We tried to pick him up from the bakery but we didn't see him. That is the only thing I had with him. I didn't even make a general inquiry about him. I just went down there to shadow him. I never saw him. I did not know, and never found out, who owned that Chevrolet car. It was an occupant of that car that got out and had a talk with Burr. McMullin reported the number of Lamb's car to O'Reilly, and O'Reilly looked up the number and gave it to me to investigate. McMullin told me he was very anxious to find out whose car this was. I was given a summons by a United States Marshall on October 31, at Wardman Park, and appeared before the grand jury the next day. I was before the grand jury about three or four times. I do not remember any of the dates. From the morning of November 1st, until the last time I appeared before the grand jury we spent our time in the lobby between the grand jury room and the District Attorney's office. I

547 was brought into the District Attorney's office about 3:00 P. M., November 12th by Burkinshaw. I believe it was only once that Burkinshaw talked to me about the facts of this case before November 12th, during that 10 days or 2 weeks time.

Thereupon the witness was cross-examined by Mr. Hoover as follows:

On the morning of October 24th I went to the District Building. I went from the Pennsylvania, where I was living, over to the Plaza, which is near the Union Station, where I met Brennan, and together we started down Pennsylvania Avenue to the District Building, and were picked up on the way by McMullin and O'Reilly, about two blocks from the District Building. McMullin was driving the car. We all thought his name was Long then. O'Reilly was sitting in the seat with McMullin. Brennan and I got in the back seat. When we got to the District Building we all

went in together and went to the Automobile License Bureau. O'Reilly went into the Bureau and the rest of us remained outside in the lobby. McMullin brought up the conversation about the car number. He said he was very anxious to find out who this car belonged to. I asked him why and he said, "I don't know. I just want to know, that is all." He did not tell me why he was anxious to find out. He did not mention the number of the car in my presence. After O'Reilly came out of the license bureau he gave me a number, P-1738. McMullin was present at that time. O'Reilly did not mention the name Lamb, but of course at the time we did not know who he was or what he was. I did not have any further talk with McMullin then. He knew I was going out to investigate that number, and asked me to let him know how I made out, and I said I would. That is all that I can recall that he said at that time.

Thereupon the following occurred:

Q. You had a further talk with him again after that?

548 Thereupon the question was objected to as being beyond the scope of the direct examination; the object was sustained and an exception duly noted.

Thereupon the witness was examined by the Court as follows:

That gathering at the Mayflower Hotel on October 22 was more of a social gathering. I do not know whether we called them up and told them we would be up there, but we always do that, we do that now. We always go up to a fellow's room at night. We did not go there this Saturday night in response to any direction or instruction from either Ruddy or O'Reilly. It was for the purpose of meeting 2 or 3 or 4 of the other agents in order to have a social talk. That was the sole purpose of that gathering that night. I know I did not go there in response to a telephone call.

Thereupon the witness was further examined by Mr. Burkinshaw as follows:

I do not remember whether or not Dwyer or Merritt phoned the Mayflower that evening about 11. I do not believe they did, I know I did not.

Thereupon **Joseph E. Dwyer** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 965 Whitlock Avenue, New York, and 11 John Street, Tarrytown. I am 31. I am an operative for the Burns Agency, New York Office, and have been for four years. In pursuance of my duties I came to Washington in company with Brennan, Klein and O'Neill, arriving at 7:00 A. M., October 19. Before leaving New York I received instructions from T. A. Scanlon, manager of the New York office. He told me to go home and pack my bag and return to the office, which I did, and when I returned to the
549 office he told me to proceed to Washington with the operatives I have named; that I was going to work on a surveillance job on the Fall-Sinclair jury; that I should not approach any of the jurors I worked on in any way, or shadowed, and if I did he would dismiss me from the Agency. As far as I know, William J. Burns had nothing to do with the Agency. This operation was known as New York Operation 2053. In the course of my duties I made a written report as to what transpired each day.

Thereupon the witness was handed Government's Exhibits 194, 202, 215, 229, 245, 261, 275, and 289, which he identified as his handwritten reports from October 18 to 25, inclusive, and which were given to O'Reilly.

Thereupon the witness continued:

I never signed my name to reports. I used the designation D-9. It is customary to use initials in reports, but in my report of October 19, I did not know the initials of Ruddy and Robbins, so I used their names. On the 19th I arrived in Washington at 7 a. m. and met Robbins and Ruddy at the Union Station at 8:30. Ruddy told me to check in at the Commodore Hotel and remain in my room until I heard from him. About 10:30 Ruddy and Robbins came to my room and Ruddy asked me to call up O'Neill at the Capital Park Hotel, and Brennan at the Plaza Hotel and instruct them to come to my room, which I did. Ruddy instructed me to proceed to the court house and place Juror 7, Mrs. Bailey, under surveillance. He said I was not to connect with any of the jurors in any way, and if I did I would be sent back to New York and dismissed. I got to

the court house about 2 p. m. and observed Mrs. Bailey coming out at 3. I had observed her in the jury box by looking through the window. I did not go into the court room. Mrs. Bailey boarded a trolley car here on the corner. There were so many people around, to avoid
550 suspicion I did not board the same car. I got a cab and followed the car for several blocks, then dismissed the cab and boarded the car. I was not followed by anyone. Mrs. Bailey got off at Connecticut and Woodley Road, and I got off at the next stop. I returned and she was out of sight, so I placed the entrance of the apartment under surveillance until 10 or 10:30. There was no one loitering around the vicinity of subject's home. On the 20th I left the Commodore at 7:00 or 7:30 and went to the vicinity of 2700 Connecticut. At 9:00 Mrs. Bailey came out and got a trolley. I followed her to the court house and then went on and had breakfast. I did not go in the court house with her. At 12:45 she came out with Miss Heaton and they went to a shoe shining parlor and then to the Coffee Shop. She did not connect with anybody. I didn't follow her into lunch. Then she went back and stayed in the court house. I did not go in there. She came out again at 3 with Miss Heaton and they went to Hecht's, then to Philipsborn's, then to Brook's; and then to Steven's or the Rosedere, I don't know which was first. I lost them momentarily and the next time I saw Mrs. Bailey, Miss Heaton was not with her, so I assumed they separated in the vicinity of 14th and New York Avenue. Mrs. Bailey proceeded home and I followed on the same trolley. I kept her apartment house under surveillance until about 11:00 P. M. To the best of my knowledge there was no one following her that day and there was no one loitering in the vicinity of her home. On the 21st I left my hotel around 7:00 or 7:30 and went to the vicinity of 2700 Connecticut. About 8:30 or 9:00 Mrs. Bailey came out and went to the court house, where I left her. I returned around 12:30, and at 12:45 she came out with Miss Heaton and they went to the lunchroom. I kept her under surveillance until 10:30 or 11:00 P. M. Nothing un-
551 usual took place. About 7:30 a woman came out of 2700 Connecticut — with a man and they got a trolley and went to the Belasco Theatre. I

felt sure it was my subject, so I followed them. I found the show would end at 11:20, so I went back to 2700 Connecticut until that time. After the show I saw the woman again, got a good look at her and found it was not Mrs. Bailey. I did not report this. I then went back to my hotel. I had just gotten to bed when I got a phone call from O'Reilly, between 12:00 and 12:30. He told me to come to his room at the Mayflower. I went there in a cab and got there 15 or 20 minutes later. I stayed there about a half-hour. I said I discontinued at 2:30. After I left the Mayflower I went to Child's with Merritt, had something to eat and discontinued at 2:30. I can't tell everybody who was at the Mayflower. O'Neill was there, and Kirby. I don't know about Homrighausen and McMullin and Knowles. Brennan was there, and I think Klein in the corridor on the fourth floor waiting for the elevator when I came up. Ruddy and O'Reilly were there. I am not sure about Robbins. There were 5 or 6 agents there when I was. There was no one there but Burns Agents. O'Reilly's room was 401. When I got there Ruddy was talking to someone. Merritt and I had a personal conversation, not about the operation. Ruddy told me to discontinue on Mrs. Bailey, and wait at my hotel the next morning until I heard from Merritt. He said, "You remain there until you hear from Merritt, and you are to meet Merritt wherever he is at the time he phones you. And you are to go with him and try to get a designation on Juror Kern's brother." That is all the instructions I got from him and that is all he said. Merritt and I then left. Steer was not there while I was. Ruddy talked to some of the other agents while I was there, but I don't know what he talked about. He did not tell me any-
552 thing about Kern's brother. I don't know whether he told me where he lived. Merritt and I looked at a city directory. There were 3 or 4 Kerns in the book. I was given to understand somehow or other that Kern's brother also worked in Holmes Bakery. I think Ruddy told me he assumed he worked there. I assumed it somehow. I don't know whether he gave me the brother's first name and where he lived. I think I got the impression out of the book that outside of Juror Kern, the other three Kerns all had the same address. I don't know whether

this is the directory or not. I think the one I looked at was this George Kern, driver 1125 D Street, N. E. I am not sure. Ruddy didn't say anything at all about any connection Kern's brother had with the Fall-Sinclair case. He simply said he wanted him placed under surveillance. He did not tell me why. He assigned only Merritt and me to that job. Ruddy positively said nothing to me about Kern's brother being a gambler. To my knowledge he did not say it to the others. O'Reilly never said anything about Kern's brother being a gambler. I never said anything to O'Reilly outside of a personal talk. To the best of my recollection I have stated everything that was said. On the 22nd I remained at my hotel until 10:15 or 10:30, when Merritt phoned me to join him in the vicinity of Holmes Bakery on F Street. I met Merritt and Steer there about 11:00. Merritt designated a man to Steer and me, whom I assumed was Kern's brother, whom Steer and I placed under surveillance. This man got into a Lincoln touring car, and I think he drove away. I did not follow him as I could not get a cab. Merritt had seen Kern driving this car, so assumed this man might be Kern's brother. About 1:00 or 1:30 Merritt found from O'Reilly that this car did not belong to Kern, so we concluded the man driving
553 it was not Kern's brother. I remained around the bakery. I am not sure, but I think Kern came out between 4 and 6 and got into a Chevrolet. I know that he came out about 8:30 and drove off in a Chevrolet, and we were unable to follow him. I never did see the brother to my knowledge. Merritt, Steer and I then proceeded to the vicinity of Kern's home. About 9:00 or 9:15 a Hudson car drove up and Kern and three other men got out and entered Kern's home. An hour later three men came out and drove off in the car. We were half a block away, scattered around. We assumed Kern was not one of the three men who came out. We did not follow this car because we had no cab. Around 11:00 the lights went out, and after waiting a reasonable time we left. We went to Child's near the Union Station and from there I called O'Reilly. He said he was doing nothing, so I said we might come up to see him, and he said to come. After eating the three of us went to the Mayflower. We met Brennan in the lobby and he went with us to O'Reilly's room. We had a

general conversation, nothing about the work, and left in an hour or so. Steer left before the rest of us, and then Long came in. Klein and Knowles were not there. I did not receive any instructions. He told me to continue the same thing tomorrow. I do not recall that he said anything else. When I telephoned him I did not report to him verbally about my operations of the day, I do not recall whether I reported verbally to him at his room. I might have said that we did not locate Kern's brother. I do not know that Merritt or Steer said anything about the work. To my knowledge Merritt said nothing about the man in the Lincoln car, or about the Chevrolet in which Juror Kern had driven away from Holmes' Bakery that evening. I think Merritt said that that morning the Lincoln or Hudson called for Kern at his home. I don't think Mer-
554 ritt made any move to follow him though, and he went down to Holmes' Bakery and saw the Lincoln there, and assumed Kern was there. That is when he called me at the hotel. I do not know whether it was the first time Merritt had seen that Hudson that he gave the number to O'Reilly that night or not. Merritt had Kern under surveillance previous to the time that I went to work with Merritt that day, and I do not know whether he had seen the Hudson before that day or not. If he had he would not have mentioned it again. I do not know whether he had seen the Chevrolet before that, but if so he told about that. I know Kern very well by sight. It was really no conference there at O'Reilly's. None of the discussion took place out of my hearing. It was just a general, social visit, I do not recall anything in any conversation. I am positive that Ruddy and Robbins were not there when I was. Long left before Merritt, Brennan and I did. Long came in and wanted some money to get a new tire for his car. He said he had ruined a tire that day in shadowing a juror; that he went to the Flying Field where his subject alighted from the car he was in, and went to speak to a man in another car; that as there was only a few people around he took an aeroplane ride to avoid arousing suspicion. I do not know whether or not Long got any money. I do not know how much he asked for. It is customary to get money from the manager or assistant manager handling the case, on any case. It was not unusual

for Long to ask for money. I did not go up there for money and did not get any. It was just a social call. To my knowledge neither Merritt nor Steer got any money. I did not see any money at all. O'Neill was not there. On the 23rd I left my hotel around 8:00 A. M. and went to the vicinity of Juror Kern's home where I joined Mer-
555 ritt. I was still with Merritt on Juror Kern, in the hope of getting a designation on Kern's brother. We remained there that morning. About 1:00 P. M. we observed a Hudson in front of Kern's home. We were moving around and I did not see it come up. About 1:50 Kern came out and got in the Hudson, but did not start it. He reentered his home and came out about 3:15 or 3:30 with a little girl about 9 years old and walked to a moving picture a couple of blocks away. I went in the theater and came out near the end of the picture. When I came out I saw the Hudson parked about half a block away. Kern did not connect with any one in the theater. I also saw Merritt. We engaged a cab and held it about a block in back of the Hudson. In a short time Kern and the little girl came out and entered the car. A woman was driving. They drove around the block and we lost them. We went back to Kern's home and the Hudson was out front. Mrs. Kern and the girl were still in the car. In a minute or so Kern came out and got in the car and started them off again. In a short distance we lost them again, so we dismissed the cab and went back to the vicinity of Kern's home. Then I went to 1125 D Street, the address I got out of the City Directory, which I understood was Juror Kern's brother's home. I think Ruddy said the brother was a baker. I did not know his first name. The City Directory said a baker named Kern lived at this address, so I took a chance on it being the brother and went down there. Ruddy told me this at the Mayflower, Friday night, the 21st. He told me then to try to place Juror Kern's brother under surveillance, that he understood he was a baker and assumed that he worked in Holmes Bakery also. He said he didn't know his first name. I remained around 1125 D until
8:00 o'clock. I do not recall whether I saw anybody
556 enter or leave that address. I made no inquiries whatsoever. Then I returned to the vicinity of Kern's home and joined Merritt. I did not have a picture

or description of Kern's brother. About 8:15 or 8:20 a policeman came up North Carolina Avenue and walked up on the porch of Kern's home. He stood there a few minutes and came down. Merritt and I got away from the vicinity a little bit. We were about 150 feet from the house. Then we placed the policeman under surveillance to get his badge number. We followed him over to Lamb's drug store, 2 or 3 blocks away and got the badge number, which Merritt put in his report. I didn't go up and ask him to let me look at his badge. I was not afraid of having my identity disclosed, but you have to have a pretty good reason to go up and ask a policeman to let you look at his badge. We left the vicinity when the policeman came because it is a strictly residential district and he might of asked us who we were around the place, and we did not want to tell him. It was none of his business. I was not afraid that he was going to ask what I was doing there. I never carry my Burns' credentials when I leave New York City, as I am living at hotels and I don't know who is going in my room when I am out, and I don't want them to know my business, because if it is known, I can't be quite so successful. O'Reilly wasn't here when I got here in Washington. My recollection is that Ruddy did not ask me if I had my credentials with me when I met him down here. The policeman went in the drug store and we waited outside 10 or 15 minutes, and as he did not come out we went back to the vicinity of Kern's home. We found the lights on in his house. In a few minutes they went out. We stayed around about an hour and then discontinued. That is all I did that day. On the 24th I had a conference with Ruddy about 10:30 on the sidewalk in front of
557 the Commodore Hotel. I was not going to take up the surveillance on Juror Kern with Merritt until noon recess. I gave Ruddy my report of the previous day and he said, "Don't forget to get over to the court house there around 12:30 or so before recess and continue with Merritt on the same matter." That is all he said, and I left him. I got over to the court house around 12:30 and remained across the street on the corner. About 12:50 Kern came out and stood on the sidewalk talking with three men. Merritt said one of these three men had been around the court house before. Kern left them and walked down

D Street and Merritt followed him. I remained and observed the three men. They entered the court building. I remained there and shortly before court went into session again I saw Kern come up the street and enter the court house. Merritt and I left and returned at 2:30. At 2:50 we hired a cab and told him to wait. At 3:00 Kern came out with another juror and walked to 3rd and D and entered a Ford Coupe which was marked "American Ice Company." Our cab had not waited and we could not get another one to follow. We went to the vicinity of Holmes Bakery and remained there until 6:00. We did not see Kern. We went to the vicinity of Kern's home and saw the Hudson car in front. About 7:40 a man came out of Kern's home with a flashlight and went up an alleyway there. We could not see who it was. In a few minutes a car drove out of this alley way. We assumed it was the man who had left Kern's home. We got the license number of that car, U-7378. We stayed there until about 11:00 and then went up to O'Reilly's room in the Mayflower. O'Reilly told me to wait in my room in the morning until I got further instructions from him or Ruddy. That is all he said.

I do not recall any discussion as to what I had been
558 doing that day on the job, or about Kern's brother.

About 12:00 or 1:30 the next day I got instructions from Ruddy to return to New York. I got those at my hotel. I left on the 3:30 train and got back to New York at 8:15.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

There were two gatherings at the Mayflower. One was a so-called meeting, when I was instructed to come up there. That was the night of the 21st and the morning of the 22nd. The second one, the 22nd, I was not instructed to come to. It was my own doing. Steer went at my invitation. It was a social gathering and we discussed all sorts of topics. Merritt and Steer and I were there. Steer stayed only a short while. Nothing was said to my knowledge at any time about getting something on Kern's brother. I never located Kern's brother. If I ever saw him I did not know it. I was one of the men selected to try to locate him. I positively received no instructions to

get something on him. In my shadowing work I at no time came in personal contact with the juror or the man I was shadowing. I never went to the house of any one of the jurors or any one of the men I was shadowing.

Thereupon the witness was cross-examined by Mr. Hoover as follows:

On this visit to the Mayflower on the 22nd, Long came in after we had arrived. He said, "Well, I had an airplane ride today. I was on the Potomac Flying Field. My subject went out there and there were only four or five cars there, and he got out of his car and talked to another man in another car. As there were so few people about, to avoid arousing suspicion I took a ride in a plane." He then said he had to get some money for a new tire,
559 as he ruined a tire going out to the flying field. Someone asked him if the subject went up in the plane and he said no. He said, "It cost five dollars and it looks foolish to put in a charge of five dollars. The client may think it is foolish." O'Reilly said, "If you went up in a plane you put the five dollars in, because in spite of what the client will think, you are entitled to it; that was your opinion at the time, that you had better do that to avoid arousing any suspicion and you went up in the airplane so as to avoid any suspicion that might be on you being around, and so it was perfectly all right, you put it in if that is the case." That is about all the conversation I recall.

Thereupon the witness was further examined by Mr. Burkinshaw as follows:

I do not remember whether or not Long mentioned the name of Juror Glasscock in O'Reilly's room. I do not recall whether I got any money from Ruddy on the 22nd. I do not remember whether or not I got $25.00 from some one of the Burns' agents that day, either Ruddy or O'Reilly. I see Mr. Kern in the court room now. He is the Kern I had reference to in my testimony.

Thereupon the witness was examined by the Court as follows:

In my report of the 21st I say, "About 12:30 P. M. subject came out of the side door." About 12:50 P. M. Mrs. Bailey and Miss Heaton came out the west door of the court house, walked down to the sidewalk, spoke to a photographer, and then walked in the front door of the court and turned to the right down the corridor. I walked in and not seeing them, assumed they went in the ladies
560 rest room, which is next to the telephone booths. I followed them in as I did not know whether or not they were going out some other door. Then I went out on the street again and tried to get in position where I could see them whichever door they came out. I was across the street. They came out then and went to lunch. On the 22nd I was assigned to shadow Juror Kern's brother if I could identify him and ascertain who he was, what he was and so on. Merritt was engaged in a surveillance of Juror Kern himself. Until such time as we located his brother, I was to continue the surveillance of Juror Kern with Merritt. Steer was also assigned to the same duties that I was assigned, simply for the protection of sending two of us in case Merritt might designate somebody from resemblance. I never succeeded in locating the brother. So the surveillance that was successful was a surveillance by Merritt and Steer and me of Juror Kern.

Thereupon **John Phillip Kern** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 1315 North Carolina Avenue, N. E., and have resided there for the past 8 years. I am married and have one child. I am employed at the Holmes Bakery as sales manager and have been so employed for 15 years. In October I was a member of the petit jury in the Criminal Division of this Court. On October 18 I was sworn as a petit juror in the Fall Sinclair case. I sat as a petit juror in that case up to and including November 2, 1927. I have three brothers, Harry L., Anton C. and George C. Kern who all live at 1125 D N. E., and another, William M. Kern who lives at 138 Tennessee Avenue, N. E. I have a sister who married a man named Vogt about 20 years ago. Vogt

is not living at this time. There is a family named
561 Vogt living next door that is no relation to the Vogt family my sister married into. My wife and Mrs. Vogt visit a couple of times a day, and are on very friendly terms. I have a brother Harry Kern who works at the Holmes Bakery. I suppose most every day while I was on this case as a petit juror Mr. Herzog drove me home or to my place of business at the conclusion of the day's session.

Thereupon **Conrad J. Herzog** was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 36 New York Avenue, N. E. I am in the automobile business with the Northeast Motor Company. I am married and have two children. During the month of October I was a member of a jury in Criminal Division No. 2. On October 18th I was sworn as a petit juror in the Fall-Sinclair case. I remained a juror on that panel up to and including the date of the mistrial of the Fall-Sinclair case.

Thereupon **Gardner P. Grenfell**, was called as a witness for the United States and, being first duly sworn, testified as follows:

I reside at 1916 H Street, N. W. I am single and employed by the Potomac Electric Power Company, as a cable splicer. In the month of October, 1927, I was a member of the jury in the Criminal Division of this Court. On October 15th I was sworn as a petit juror in the Falls-Sinclair case, and I sat on that jury up to and including November 2nd, the date of the mistrial. I was subpœnaed in this case sometime ago. I was present in the Court while Stewart gave some of his testimony. I do not own a Ford Roadster, and did not own one during the month of October. My best recollection is that I did not drive
562 a Ford Roadster during that month. I heard all of the reports read with regard to myself.

Thereupon the following occurred:

Q. From Government's Exhibit 256 purporting to be a report of October 22nd of operative Stewart, I read the second paragraph:

"At 7:15 A. M., I obtained a cab so I could follow subject should he use his car.

"At 8:30 A. M. subject left in his Ford Roadster and drove out H Street to Pennsylvania Avenue. The cab I had could not keep up with the subject as he is a very fast driver. I lost subject around Fourteenth Street."

Thereupon the question was objected to on the grounds that it was immaterial if a mistake was claimed, and outside the responsibility of any respondent if falsity was claimed; and the evidence was admitted, with a motion to strike it out reserved to the respondents; and the witness continued:

I did not ride in any Ford at all that morning. I may have done after noon. I was not the owner of a Ford Roadster at that time.

Thereupon the following occurred:

Q. Did you on that same day go to a tailor shop and return with an armful of clothes, or some clothes over your arm? A. Not that I can recollect.

Mr. Hoover: This will all be subject to the objection, your Honor?

The Court: Yes, subject to motion to strike out.

Thereupon the witness continued:

On the 23rd I did not leave my home in a Ford Roadster with another man and drive to St. Stephen's Church at 25th and L Streets. I did not go to St. Stephen's
563 Church at any time while I was a juror.

Thereupon the witness was cross-examined as follows:

I am employed by the Potomac Electric Power Company. They have quite a number of Fords. I do not use their Fords at all. I am positive I did not use a Ford the morning of the 22nd. I may have been driven in one in the afternoon, but I never use one myself. My brother had a Ford at that time. My brother has the same complexion as I have, and is about my size but a little bit larger. He resembles me very much. He does not live at the same house where I live. My mother lives there. My brother comes there very frequently. The District Attorneys have

talked to me about this case before I came on the stand. I told them I had a brother who looked very much like me. They knew that before they put me on the stand.

Redirect examination:

My brother lives in Petworth. I do not know his exact address.

Thereupon **Conrad J. Herzog** was recalled as a witness for the United States and, having been previously duly sworn, further testified as follows:

(Mr. O'Reilly stood up in the back of the court room.)

I am positive I have seen that gentleman here in court. I told Mr. Burkinshaw in his office that I may have seen him, I thought I had seen him when I was a petit juror in the Fall-Sinclair case, but I wasn't positive about our place of business, the Northeast Motor Company. I can't recall the date. At the time I felt that I saw him I was just at the entrance of our shop. He was outside the shop, talking to a mechanic employed by our concern. I did not thereafter talk to that mechanic. I don't know which one it was. I did not see O'Reilly at any other time; except in court.

564 the day that the Burns operatives were brought into Major Gordon's office was the first time I saw O'Reilly after the mistrial. This was a day or two after the mistrial. At that time I said that his face was familiar and it seemed to me that I had seen him about our place of business.

Thereupon the following occurred:

Q. Now at the time while the case of United States v. Fall and Sinclair was in progress state whether or not you were aware that you were being followed by any one?

Mr. Hoover: We object to it on the specific ground that a question of that kind is not admissible. The fact that he may have been followed by someone or thought he was followed by somebody would certainly not be evidence against any of these respondents unless the person whom he thought he was being followed by was in some wise connected with these respondents.

The Court: I think that is a preliminary question. It may be answered.

Mr. Douglas: Your Honor will let us have an exception?
The Court: Yes.

A. I had a suspicion. I was not aware.
Q. Now did that suspicion have to do with any particular incident that took place during the trial?

Mr. Hoover: We object to the question, if your Honor please.
The Court: Overruled.
Mr. Hoover: Your Honor will allow us an exception?
The Court: Yes.

A. I was after leaving court here for luncheon I was driving home. I noticed a car driving slowly back of me. And when I stopped at the house I made a turn and faced the west and this car stopped on the opposite side of
565 the street facing east. And I entered the house and looked back and saw the man sitting in the car. I waited for a while and he remained in the car, and finally I went to my lunch, and when I came out I didn't notice whether the car was there or whether he had gone.
Q. Are you the owner of the premises in which you reside, Mr. Herzog? A. Yes.
Q. State whether or not during the case of United States v. Fall and Sinclair any overtures were made by any one with regard to your trading those premises for some other premises? A. There was.

Mr. Hoover: We object to that, if your Honor please.
The Court: It is a preliminary question whether such thing happened or not.
Mr. Hoover: We will ask that an exception be noted.
The Court: Yes.

Thereupon the witness was cross-examined as follows:

I am not sure that it was O'Reilly that I saw down in front of my place. It was when the Burns operatives were paraded before me in the District Attorney's office that I told Burkinshaw about O'Reilly. I cannot identify the man that I saw in the automobile that came up and stopped. I could not identify him if I saw him again. The different agents of the Burns people were brought in the room where the jurors were, and Burkinshaw asked me and the rest

of the jurors to watch them closely and see whether or not I could identify any one of them.

Thereupon the following occurred:

Q. Isn't it true that the jurors took a vote amongst themselves and unanimously agreed that they could not identify anybody? Isn't that true?

566 Thereupon the question was objected to, the objection sustained, and an exception duly noted.

Thereupon **Charles E. Burr** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am 27 years old and reside at 1746 - 18th Street, N. W. I am married and am employed as a real estate salesman by Charles E. Wire & Sons. During the month of October, 1927, I was employed by the Cafritz Company in the real estate business. I do not know Norman Glasscock of 8th Street, N. W., who was a petit juror in the Fall-Sinclair case. I have never seen him. I do not know any of the jurors who sat in that case. On Saturday, October 29th I was the owner of a Chevrolet Coach, license number 1927, P 993. On or about the 19th or 20th of October, I had never been at the home of Juror Glasscock. I do not know where he lives. On no evening during the month of October did I park my car for any considerable length of time in the 1000 block of 8th Street, N. W. On the 29th I left Cafritz Company about 2:30 and drove to my home on 18th Street, and thereafter took my dog for a walk. Thereafter that afternoon my wife and child and I came from our house and drove north on 16th Street, and came to the vicinity of 16th and Buchanan Streets. When I got to the vicinity of 16th and Buchanan I did not park my car alongside the road next to another car, and get out and engage in conversation for some 10 minutes with the man who alighted from the other car. On that occasion I did not smoke cigarettes. I do not smoke.

Thereupon the following occurred:

Mr. Wright: It is understood that we are objecting to all this testimony, your Honor.

567 The Court: I think it is of the same character that was admitted subject to a motion to strike out.

Mr. Burkinshaw: Yes, your Honor.

The Court: All right.

Thereupon the witness continued:

While proceeding on 16th Street that day, I did not park my car on 16th Street and leave it. I stopped at 17th and Buchanan and left the car. My wife and I went in the house of Charles W. Kaman on Buchanan Street. I remained there about half an hour. I did not have any conversation in that vicinity by the side of the road with a man who alighted from another car.

Thereupon **L. Paul Homrighausen** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am 48 years old and I reside at 1830 Presstman Street, Baltimore, Maryland. I am employed by the Burns Detective Agency, Baltimore office, and have been so employed for about 10 years. My designation is H-4. In the month of October, 1927, in pursuance of my duties, I came to Washington under instructions of Charles Vietsch, a respondent in this case. About 6:00 P. M. on the 18th he instructed me to proceed to Washington the following morning and meet a Mr. Ruddy at Union Station at 8:30 A. M., and that he would instruct me what to do. Vietsch told me to go without credentials, but gave me no reason. I left my credentials at home. No one else was present when Vietsch instructed me. On the 19th I left Baltimore about 7:20 A. M. and arrived in Washington before 8:30. I meet Ruddy a little after 8:30 around the Information Bureau. He instructed me to go to the Metropolitan Hotel and stay there until further orders. I again saw Ruddy about

568 11:45 in Klein's room at the National Hotel. Ruddy, Robbins, Kirby, Stewart and McMullin were also present. Ruddy instructed me to shadow Mr. Costinett, a juror of the Supreme Court. He told me John J. Costi-

nett occupied Chair No. 3, had a tailoring business at 1212 New York Avenue, and lived at 1442 Fairmont Street. He told me to place him under surveillance and watch him to see who he connected with, and in case he made any connections, to drop him and take up the connections. He said, "In no case get too close to Costinett, or anything that would cause any suspicion. If you think at any time that he is suspicious or becomes disturbed, why, drop the case altogether. You may drop it at any time you think it is so justified. If at any time you see anything that is suspicious, or looks wrong, get in touch with me immediately, no matter what hour of the night it is. Under no conditions must you cause any alarm to the juror or anybody connected with him. These instructions must be carried out. If you do not carry them out, I will send you back to Baltimore and I will recommend your dismissal." Ruddy gave me a slip of paper containing the same information about this juror. I have not got it now. I destroyed it, but I cannot recall when. This paper had Costinett's name, home address, business address, and age, 61. It contained none of the information about Costinett contained in Government's Exhibit 1. I made out reports each day.

Thereupon the witness was handed Government's Exhibits 203, 216 and 230, which he identified as his handwritten reports two of which were handed to O'Reilly and one to Ruddy.

Thereupon the witness continued:

Ruddy then told me to go to the Supreme Court, where I would find my subject in Seat No. 3. He said to go in and take a short look and not to stay any longer
569 than I could help, and then to go outside, and if I could not find him there, to pick him up at his home in the morning. I went to the United States Supreme Court about 1:00 o'clock and waited around there all day until the court was over and then reported to Ruddy that I could not find any jury. I wrote my report of that day late that night. The second paragraph of it says: "Costinett is designated as Juror No. 3 and described as 61 years old, and an Italian, was being guarded by two men." Ruddy must have told me that either Wednesday morning or Wed-

nesday night. I saw him twice that day. I can't remember whether he gave me that information in the morning at Klein's room. He told me there that Costinett was an Italian, and he gave me the small slip with some information about Costinett on it. Some time during that day he told me that Costinett was being guarded by two men, but I can't remember when. I also saw Ruddy that night at the Metropolitan Hotel after 11:00 o'clock. Someone was with him, either Robbins or O'Reilly. There was some talk as to Costinett in a general way. I don't remember the conversation. Ruddy did not tell me that he had been following Costinett that day. When Costinett left his home or place of business in the morning, he left in the machine and two men went with him. I don't know who they were. I can't remember whether those were the two men I had in mind when I started out to work on Costinett that day. It has faded from my mind. I don't remember whether on the morning of the 19th in Klein's room Ruddy told me that Costinett was being guarded by two men. No one told me to put that in my report, that I remember. I did not say that Ruddy told me about the two guards. I don't know where I got this information. I have a hazy recollection about something being said, at my room
570 or at the National Hotel, about being watched, or something, but I don't remember the details. As a matter of fact, I was surprised to see that in my report. The report is in my handwriting. Then my report says, "However, I kept at a little distance, as I did not know just where Costinett's guards might be concealed, and it was possible that they might also have watched the vicinity about 1212 New York Avenue." I expected Costinett would be watched. This was late in the evening. Sometime between 3:30 and 4:00 I proceeded to 1212 New York Avenue, which I placed under surveillance. There is a possibility that I had in mind that Costinett was being guarded by two men then. Around 6 o'clock when he left he went in a machine, and two men went with him. They might have been around all day and I not know it. I don't know who they were. I kept at what I thought was a safe disiance, as a matter of precaution. Any direction Ruddy gave me about being careful suggested the possibility of guards being there, I would naturally expect a juror would

be watched in a highly important case, and was naturally suspicious. I would think it right and proper to be done. I can't remember whether or not Ruddy said anything to me with regard to Costinett having two guards. When I got there around 4 o'clock I didn't look for any definite guards, but I looked to see if anybody was watching him. I never heard that Sinclair was having Costinett watched. I was not assigned to watch any other Burns men. Ruddy didn't say anything about any other men working on Costinett. At 6:05 P. M. two young looking men entered Costinett's shop, and immediately a man whom I assumed to be Costinett went out with them and they entered a large olive colored sedan. I thought the car would go east, as it was pointed that way, so I went to the corner of 12th
571 and New York Avenue, thinking it would pass and I would get the number. But it turned around in the middle of the block and went back. I have seen Costinett since this trial was on. I don't know which seat in the car Costinett took. I don't know what make of car it was. Thereafter I proceeded to 14th and Fairmont by street car, and stayed on duty there until about 11:15. Then I discontinued and went back to the hotel. Then Ruddy came and I wrote my report after he left. That is all I did that day that I can recollect. On the 20th I went out to Costinett's home at 7:30 A. M. and tried to pick him up out there, and I didn't succeed in seeing him leave his home. I came down to the court house, but did not go in. I did not go in the court room the preceding day because there was no room. I got my original designation on him through his appearance in the shop Wednesday night, and then seeing him sitting in the jury chair from the window. At no time during the Fall-Sinclair case did I come in the court room. My report says, "As soon as I saw him in court, I went out again." I saw him through the window, sitting in a chair. When he turned I could see his profile. Then I crossed the street and talked to a street sweeper, and then I went in a cigar store right across on D Street to get some cigars. I tried to pick Costinett up at noontime, but wasn't successful. I followed a wrong man, but couldn't catch him, so I concluded he was not Costinett and dropped him. Then I went away and came back a little before 3:00. A little after 3:00 a man resembling

Costinett came out of the court house and walked north. I lost sight of him and went to the vicinity of Costinett's business place. In a few minutes Costinett came up the alley and walked into his shop. I passed by later on and saw Costinett sitting there at the table. At 6:00 the
572 lights went out. I did not see Costinett come out and I could not see anyone in the shop. I went up to his home and watched up there until somewhere around 11:00. On the 21st I left the hotel early in the morning. I did not pick up Costinett. I watched around his home for a while and then I watched around his place of business, and then I came up to Court. I stayed in the vicinity of the court house from time to time. I do not remember seeing any other Burns agents around the court house at this time. I do not think I had any conversation with any of the other Burns agents down around the court house on Friday morning. We Burns agents were told to keep separated while on this operation. We are not supposed to know each other except when necessary or proper. I knew Kirby, Ruddy, Robbins, O'Reilly, Klein, Stewart and McMullin. I do not remember seeing Ruddy, O'Reilly or Robbins *are* the court house that day. I did not see Costinett when he came out at noon. I was standing in the doorway of a cigar store on D Street where I had the best cover and would give the least suspicion. I expected suspicion from Costinett, or his friends, or anybody else. I state in my report "or he may have gone out some other way. I have been informed that Costinett is well known at Court, and I have been told that he has served on at least twelve juries in two or three years." I overheard some talk about that, I don't remember where, and I read an article in a paper on the same proposition. I don't know who was present when I overheard this conversation. The participants in the conversation were a couple of men. I don't know how they were dressed. It was sometime during the 21st, I don't remember when. I can't remember what I heard. The paper, the Baltimore Evening Sun, is the thing that attracted my atten-
573 tion more than anything else. I had paid very little attention to anything in the paper with regard to the case prior to the time I came to Washington. Prior to the time I came over here I had not the slightest idea I

was going to be assigned to this work. I had not heard it discussed in the Baltimore office of the Burns Agency. I put in my report what I read in the newspapers to call Ruddy's attention to it. I often do that. The next sentence in my report is this: "As I did not see the jury return by 1:15 P. M. I made some inquiries." I made those inquiries in a cigar store, from people that walked in and out. Some man come in there and said, "Well, the jurors are off this afternoon. There is an argument going on, and they won't come back until the following day." I made no other inquiry. I don't remember who that man was, whether he was young or old, big or small. He was white. I think I was in court this morning when Grenfell was on the stand. I don't remember who was on the stand when I first came in. I do not remember whether I have ever seen Grenfell. I do not remember whether the man who was on the stand when I came in here this morning was the same man whom I made inquiries of in the cigar store across the street. I cannot describe that man. I don't know who he was. I cannot remember whether or not it was a juror. No inquiries were made about Justice Siddons on Friday. There was no remark made about anybody connected with the Court on Friday. I made a special effort to refrain from discussing the case that day. Justice Siddons' name was not mentioned on Friday. On Thursday morning in the cigar store his name was mentioned. When I went in there was a man there ahead of me with a big overcoat on, and he got to talking about the case in general, and I asked him for a description
574 of the court room. He was talking about the court being so small that it couldn't accommodate the crowds, and I asked him for a description of the court and the principles, the names of two or three of those I had read in the papers. With that he walked out. A man without a hat came in. I asked him for a description of Judge Siddons and Mr. Littleton and one or two others, and that was all. As far as I can remember that is all that took place. No members of the jury were discussed. I asked what Sinclair and Fall looked like. He told me Sinclair was a small heavy-set man. Fall wasn't discussed.

I made that inquiry because the other man was talking about the case. He brought up the subject.

Thereupon the following occurred:

Q. What did he say about the case?

Mr. Hoover: We object.

A. I don't remember. Just in a general way, that there was a crowd up here, something like that. It had no bearing on the case that would amount to anything.

Q. Well, I don't want your characterization of it, Mr. Homrighausen. I want you to tell us what he said, to the best of your recollection.

Mr. Hoover: And to that we object.

The Court: Said to the witness, as I understand it. Take his answer.

Mr. Hoover: Your Honor will allow us an exception?

The Court: Yes.

Thereupon the witness continued:

I don't remember the exact words. It was so unimportant I paid almost no attention to it. He talked about the crowd at the court, and the court being small, and things along that line. I did not ask him anything about
575 Costinett, nor make an inquiry of him with regard to any of the jurors, nor ask him what any of the jurors thought of the case. I do not think I asked him what he thought would be the outcome of the case. All of this applies to Thursday's conversation. On Friday I was particularly careful not to discuss anything in connection with this court at all. I would never have asked a word if a man had not said that the jury had gone home. My report of the 21st says, "I made some inquiries." That applies to the man that came in the cigar store and said the jury had gone. I asked if they had all gone, and he said they had. Then I left. I don't know who the man was. I think he was short. To the best of my knowledge he was not a juror. I knew only one juror at that time. I do not remember talking to any other persons around the court house while I was engaged on this operation. I have seen Juror Kidwell on the stand. I am positive that I never had a conversation with him, and never spoke to him on

any occasion. After I received that information with regard to the jury being excused, I went over to New York Avenue and took up my surveillance of the vicinity of Costinett's business place. My report says: "The two men that watched here as described in yesterday's report did not appear in this vicinity today." That is correct. I went home around 6:00 o'clock. I did not follow him home because I missed him. I missed him Wednesday night, Thursday night, and Friday night, Thursday morning and Friday morning, and Thursday noon and Friday noon. I saw him in his place of business there on Friday. At 6:00 the helper came out and the lights went out. Costinett must have gone down the alley to get away. At no time did I shadow Costinett from his home in the morning down to his place of business, or from his place of business to the court house, or during the noon recess, or from the
576 court house in the afternoon to his place of business, or from his place of business in the evening to his home, or when he went out in the evening. I didn't succeed in picking him up at all. My instructions when assigned to Costinett were to see all who connected with him and take up the connections and drop him if he made any such connections. I did that to the best of my ability. I left my credentials in Baltimore. At the Union Station I told Ruddy I did not have my credentials. I told him so he would know. I had left my credentials behind on other occasions. I don't remember Ruddy, at any time, asking me whether I had any Burns credentials on my person. On the occasion of that interview between Ruddy and myself in the National Hotel I did not tear up some letters. I was given instructions Friday night about midnight to return to Baltimore. I left Washington Saturday morning around 8:30 or 9:00 or 10:00. I spent Wednesday, Thursday and Friday in Washington and returned Saturday morning. Mr. Ruddy did not tell me he was sending me home because I had been found talking with a juror in a cigar store across the street from the court house. He said nothing on that subject. He said nothing to me on any occasion with regard to my talking with jurors. He never cautioned me to stop talking to persons around the court house. He told me we Burns agents should not speak to each other on the

outside. That is taken for granted, though. It is the regular thing. He never explained why he directed me to go home after having spent three days in Washington on this job.

Thereupon **Richard S. Kirby** was called as a witness for the United States, and being first duly sworn, testified as follows:

577 I live at 710 South Clinton Street, Baltimore. I am 54 years old and employed as investigator for William J. Burns in the Baltimore office. I have been so employed since 1914. In the course of my duties I came to Washington on October 19th. Charles L. Vietsch, manager of the Baltimore office, and a respondent in this case, directed me to come. I went to his house about 6:30 on the 18th and he told me to go to Washington in the morning and meet Ruddy at the Union Station. He gave me a description of Ruddy and I left. He did not tell me what the nature of my duties were to be on my arrival. He told me he did not know himself. Nothing was said about the Fall-Sinclair case at that time. I came over with Homrighausen. We arrived here about 8:15 a. m. on the 19th and met Ruddy at the Union Station. He sent us to separate hotels. I could not get in the hotel he sent me to as it was full, so I went back to the Union Station but could not find Ruddy, so I went back to my hotel, and finally Homrighausen came by and took me to the National Hotel, to Klein's room. Ruddy, Robbins, Klein and Stewart were there. I can't remember whether McMullin was there. That is all I remember. I did not have my Burns' credentials. I left them in Baltimore. There is a standing order that any man leaving town shall leave his cards of identification and his credentials in Baltimore. I knew I was to shadow a juryman. My work number was K 1. I wrote out reports in my own handwriting every day I was here. Ruddy or O'Reilly came to the hotel and got them and I took two of them to the Mayflower.

Thereupon the witness was handed Government's Exhibits 204, 217, 231, 247, 262 and 276, which he identified as his handwritten reports from October 19 to 24, inclusive.

Thereupon the witness continued:

578 At the National Hotel I was instructed to go to Court and pick up Juror Holt in Seat No. 6 and follow him to see if anybody connected with him, and if anybody did to drop the subject and follow the man who connected with him and find out who he was and where he went and all about him, and at no time to get in touch with, or to talk with the juror in any respect, and if I did I would be sent back to Baltimore and dismissed. He gave me a description of him as weighing about 200 pounds, about 5 foot 6 inches, an elderly man with gray hair and gray mustache, who wore tortoise shell glasses and resided at 1104 4½ Street, S. W. He did not give me a slip of paper with that information on it, that I remember. The facts contained in Government's Exhibit 1 about Holt, up to where it says his stepson is Joe Spickle were given me by Ruddy. Ruddy then told me to get a room at the Hotel Harris, and I left. I went to dinner and then to the Supreme Court of the United States in the Capitol. I did not make any inquiries there, but I did not find Holt, so I saw I had made a mistake and I came over to this Court. I asked a man on the street where the District Supreme Court was, and he told me. I got here after Court was adjourned, so I went to the vicinity of subject's home, and stayed there until 9:00 p. m., but could not see him, so I discontinued. I did not pick up my subject at all that day. On the 20th I came down to this Court and stood in line and got in the court room about 9:53. I sat on the last bench next to the door. I remained there 6 or 7 minutes, saw my subject in the jury box and went outside. I hung around until time for Court to adjourn, and then came back about 12:30 and picked my subject up when he came out to dinner. I was never in that cigar store across the street. Holt came out about 12:50 and went to 6th and D and purchased
579 a cigar. He came back and hung around the court and went in at 1:10 and I left. I went to my hotel and came back about 2:30. I do not recall whether I saw any other operatives around the court house at noon recess. I did not see O'Reilly that day. I first saw him about 12:30 the night of the 20th. Ruddy brought him to my hotel and

told me he was assistant manager and I should take instructions from him. That is the first time I ever saw him. I saw him very seldom after that. He did come to the hotel after I got in at night, at 12:30 or 1:00, to get a report, and I had no further interviews with him than that. I never saw him around the court house. I cannot remember whether or not I saw Klein here. I saw Sullivan twice here. The first time he was walking west on the other side of the street. The second time he was coming towards the court house. I can't say I ever saw O'Neill around the court house. I did not know him then. I only knew those that I saw in Klein's room when I was there the first time. I never saw Homrighausen after the morning he came over here with me. I saw Stewart once. He was across the street, alone, about 3:00 o'clock. I paid no attention to him. I never knew him before in my life until I saw him in Klein's room. At 3:00 o'clock on the 20th Holt came out, I do not know which door, and had his picture taken with the other jurors and then went home. He got a "Wharves" street car and I got on the same car. He was up front and I was in the back. I kept his house under surveillance until 9:00 or 10:00 o'clock. I had some trouble keeping him under surveillance in that neighborhood, not through him, but through a lot of drunks. There must have been a speakeasy there, and they thought I was a Government man, and I had to keep stepping. I could not keep standing in one place. That is the reason I left.

580 I can't recall anything that happened that night I left at 10:00 because I did not want those people following me around. They were watching me from all quarters. One man came up and said, "Have you a match?" And I said, "Yes, why?" and he left without getting the match. On the 21st I went to the vicinity of Holt's home, 1104 4½ Street. He came out in his shirt sleeves and went to a store in the 1000 block, stayed there a couple of minutes and went back home. Finally he came out with his coat on and went to the corner of L street and got a street car. I got on the same car a block away. There were plenty of other passengers on the car. He was in the middle of the car and I was on the last seat. He came up to the court house and stood outside and smoked. I did not

see him talk to anyone that morning. I left and got him again when he came out for lunch. He went in a restaurant at 6th and D, diagonally across from the Police Court. I waited outside for him. There was a man with him whom I did not know. I have not seen him since. I lost sight of Holt after he entered the door. I am positive he went in that restaurant. He came back to Court and I followed him. Ruddy ordered me not to come in this Court after I picked Holt up. He told me that the first day in Klein's room. I don't know whether he gave the same instructions to the other agents. When Holt left the Court this day he went home by street car. I got on the same car and got off when he did. He got off the front and I got off the back. I always got on the same street car he did and when he got off I got off at the same place. When he got home on the 21st, I placed his house under surveillance. My report says, "He was at no time trailed or connected by anyone. I remained in the vicinity of his house until
581 11:00 p. m., when I decidsd to discontinme." That is correct. I have been engaged in shadow work since 1914. No one else had been shadowing him up to that time as I could perceive in any way. I believe I would have known had anyone else been shadowing him. When I got in that night there was no one to get my report. Every night they got the report. About 12:30 or 12:45 O'Reilly phonesl me and asked me to come to the Mayflower and bring my report. I had not retired at that time. I went to the Mayflower in a street car and got there about one. I was back in my hotel by 2:00 o'clock. I remained in the Mayflower about a half-hour. As far as I can remember, O'Reilly, Ruddy, Stewart were there. I didn't see Steer. I don't recall about Merritt, O'Neill and McMullin, or Long. I guess there were 6 or 7 men there. When I arrivsd they were sitting around smoking and talking. I gave O'Reilly my report. I then saw Ruddy and told him I was out of cash and he gave me $25.00 and I left. I never reported verbally. There was no report of progress or anything that day. Neither Holt, Kidwell nor Kern were mentionesl. There was no mention of the operation. From the time I got there until the time I left was a half-hour. While I was there none of the operatives in the room said

anything to me with regard to the operation. That is all I can remember that happened there. I was at the Mayflower twice. The first time I was called to come, and one time they didn't get my report, so the next morning on the way to the subject's house I got off the car and shoved it under the door. I was not requested in that telephone call to come over to the Mayflower Hotel immediately, that Ruddy was going to make a change of assignments for the following day. Ruddy made no changes in the assignments of operatives for the following day there that I know
582 of. I did not hear everything that was going on in the room. I was in different parts of the room and some portions of the conversation going on were out of my hearing. If there were any features of the operation then in progress discussed I didn't hear it. Before leaving I did not receive any further instructions from Ruddy. I got the money and went back to the hotel, as I was sleepy. The 22nd was the day I rented a room diagonally across the street from Holt's home. I wanted to get off the street from amongst the people. I began to feel as if they suspected me of being an officer of some kind, and there were some speakeasies and plenty of drunken men around there. I can shadow better under cover. I wasn't afraid of the people of the neighborhood, but I didn't want the policeman to find out who I was. I didn't know I was shadowing a juror in the Fall-Sinclair case. Ruddy did not tell me and I did not ask him. When I came into this court room I didn't know the Fall-Sinclair case was in progress. I came in because I saw other people in line and the man in Seat No. 6 fitted the description I had, so I knew I was right, and then he went home to the address I had been given. If there had been a woman in Seat No. 6 I would have known I was wrong. I found out the last few days it was the Fall-Sinclair case by reading about the case in the Washingtn Herald. The paper did not say Holt was a juror in that case. I just connected the two. O'Reilly never told me. I did know it the 18th, 19th, 20th, 21st or 22nd. I hired a room at 1013 4½ Street from a woman named Dodd. I have not seen her since. I gave her my right name, but I did not tell her who I was or what my business was. I never slept there. I occupied the room in

the evening after the jurors got out until 11:30, and nearly all day Sunday. Then I would go back to the Harris
583 Hotel. I saw Brennan on the 22nd at the corner of L and 4½ Streets. He said he had been sent down to get a spot on Holt. We walked around until 9:00, and as we did not see him by then I said that he would not be out again, so Brennan called Ruddy and then O'Reilly, and then left. I stayed around until 11 o'clock, when the lights went out, and I left. I did not see him. The room I hired was diagonally across the street, 6 houses down. From there I could see the entrance to Holt's house. On the 23rd I went down there and stuck around all day. In the morning I saw him around for an hour and a half or two hours. Then he came out from 5:00 to 6:00 and then went in, and I didn't see him any more. On the 24th I came directly to court at 12:30. Holt came out and went to lunch at 6th Street. He came out again at 3 with a man I took to be another juror. Then went to 9th and D, where this man left, and Holt went to 9th and Pennsylvania Avenue and got on a car. I went up to the next corner and got on the same car. He went home and stayed in the rest of the evening. I have not seen the man that was with him again. I thought he was a juror because they came out together. He was slight, 5 feet 8 or 9, had on a dark overcoat and hat and was 48 or 49 years old. About 7:45 a car came up L Street and parked below 4½ Street. The driver got out and went into Holt's house. I walked over to get a look at the man, but he got out ahead of me and left in his car. The license was F-176. I believe I reported it to O'Reilly. I put it in my report of that day.

Thereupon the witness was cross-examined as follows:

I testified that I was employed by W. J. Burns. I did not mean individually, but I meant by that the W. J. Burns Detective Agency. The first time I saw Ruddy at the National Hotel Stewart was also there. I am sure that
584 O'Reilly was not there. I was given certain instructions about the man I was to follow, his name and business and his address. The same was done to the other operatives at that time. I think Stewart received his while I was there. I received them from Ruddy. I didn't know O'Reilly then. I had never seen him.

Thereupon **Sidney A. Knowles** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am 25 years old and reside in Philadelphia. I am employed by the Burns Detective Agency and have been for 2 years. I have been in the Philadelphia office for the past 8 months. Prior to that I was in Miami. In pursuance of my duties I came to Washington in October by direction of Welchans, Assistant Manager of the Philadelphia office. I arrived here the morning of the 21st and reported to Ruddy at the Union Station. I remained here until the evening of October 25. I was assigned to shadow Herzog, a juror in the Fall Sinclair case. I have seen Herzog in the court room and he is the same man I shadowed, to the best of my knowledge. While on this operation I made written reports from day to day.

Thereupon the witness was handed Government's Exhibits 219, 233, 249, 264 and 279, which he identified as his handwritten reports from October 20 to 24, with the exception of 219, which he identified as being similar to his report, but not in his handwriting, or in a handwriting which he recognized.

Thereupon the witness continued:

My symbol was K 37. This is the first time I have ever seen Exhibit 219. "Acting under instructions from Asst. Mgr. M. L. W." That is Welchans who now sits in the court room. "I boarded train at West Philadelphia station *from* Washington at 9:23 p. m. Upon my arrival at 12:20 a. m. I was instructed to check in a hotel and
585 await orders. I discontinued at 1:30 a. m." Expenses are listed as $10.38. That is a true and correct transcription of the report I made on that day. I turned in the report I made to O'Reilly at my hotel, the Pennsylvania, on the night of the 21st. The last time I saw that report it was in O'Reilly's possession. I have no knowledge as to how this particular report was written, or who wrote it. I wrote five reports in all. I met Ruddy in the Union Station at 12:23, the morning of the 21st. He instructed me to check in the Pennsylvania Hotel, and the next morning I was to meet O'Reilly, who would give me

a designation on my subject. He also instructed me that while I was shadowing this subject in no way to come in contact with him, and not to talk to him, and if I was to disobey those instructions I would be sent back to Philadelphia immediately and discharged from the Agency. He told me my subject would be a juror in the Fall-Sinclair case, but he did not give me his name or tell me anything about him. That is all he said. No one in the Philadelphia office said anything to me about credentials. Welchans said he didn't know anything about the case I was going on. I brought my credentials with me, but I did not carry them with me. When I found it was a surveillance case I mailed them back of my own accord in the afternoon of the 21st. O'Reilly did not discuss credentials with me on the morning of the 21st. I came down here alone. There were no other Burns agents at the Pennsylvania Hotel that I knew of. On the 22nd I met O'Reilly at 8:00 a. m. in the lobby of my hotel. We were alone. We got a cab and went to the court house. In the cab he gave me a little slip of paper with a description of my subject and his home and business addresses, Seat No. 11 and his age. I have not that paper now. There was also something about his brother.

I can't just recall what it was. It said he was a part
586 owner of a Ford garage. It said nothing about his religion, or fraternal affiliations, or about his having been a juror before. O'Reilly told me in the cab that Herzog was a juror in the Fall Sinclair case. I got out of the cab at 3rd and D, left O'Reilly and walked to the court house. I could not get in the court room because of the crowd. O'Reilly told me to go in Criminal Court No. 2 and see my subject, if possible. I stayed in line until the noon recess and then went around to the vicinity of the west entrance in the hope of seeing my subject. I stayed in that vicinity in the little park until 3 o'clock. I was moving around. I don't recall what time court adjourned that day at noon recess. I made no inquiries of anyone as to what time court recessed that day. I did not speak to anyone while I was at the west end of the court house. I did not see my juror come out at any time during that noon recess. I don't remember seeing any of the other agents out there. I am sure I didn't see O'Reilly. About

3:00 o'clock I went in a cab to the vicinity of subject's home, 36 New York Avenue, N. E. I discharged the cab on the corner of New York Avenue and Capitol Street, and remained on that corner. I saw Herzog come along in a Ford Sedan. He left his house at 4:25 and circled around the northeast section of the city. I followed in a taxi for 20 minutes and then lost him in heavy traffic. I do not know the city and do not know just where he went. I stayed a block behind him. I lost him at 12th and E, N. W. He did not stop at any time. Then I went back to the vicinity of his home. I do not recall what time I got back there or how long I remained there. I proceeded to my hotel and after writing this report I discontinued on the operation. About 12:20 I received a phone call from O'Reilly telling me that if I was not too tired and not doing anything
587 to come over to the Mayflower. I got there about 12:30. Ruddy, O'Reilly, Brennan, Stewart, Sullivan and Long were there when I arrived. I do not recall anyone else at that time. The first thing I did was to ask for some money, which I obtained. Ruddy asked me how everything was, how I was, and how I liked my hotel. That is all. No further conversation took place between myself, Ruddy or O'Reilly while I was there, O'Reilly said nothing more with regard to the occasion for the telephone call. I remained there an hour and a half because I had not seen Brennan for about a year, and as he is a friend of mine we talked over old times. Ruddy told me to continue the way I was going. I had not communicated to Ruddy what I was doing up to that time, or my work on that day with regard to Juror Herzog. When Ruddy told me to continue on I took it for granted the next morning I would go back on the job. I arrived back at my hotel at 2:30. I do not recall whether I was at the Mayflower the following night, Saturday night. I was up there another time. It was during the day, but I do not recall when. O'Reilly was the only one there. I went to see him to see whether I could get a U-Drive-It Car, because it was hard to keep my subject up as he had a car and I had to use a taxi. I did not have a driver's license, so O'Reilly told me I could not get a car, and I did not. On the 22nd I left my hotel at 6:30 a. m. and went to the vicinity of the subject's house. At 8:15 he came out and entered his car,

which was parked in front of his house, and drove to the Northeast Motor Company, 920 Bladensburg Road. I followed in a taxi, and dismissed the taxi there. I stayed around there, moving about until 10:20 a. m., when the subject left and went home. I followed him in a taxi, which
I dismissed after I got to his home. In a very short
588 time he left his home with a middle-aged lady and
drove off in his car. I could not get a cab for several minutes and then I could not find him, so I went back and placed his house under surveillance. He returned alone at 12:45. I was standing about half a block away on the other side of the street. He came out in about 10 minutes, got in his car and drove off. I got a taxi but I lost him. I do not recall just the time he arrived back. He came out again in a short time and drove back to the garage. I stayed out there until about 11, and I think I discontinued about 11:30 or 12. On Sunday, the 23rd, I did not see my subject until 2:10 that afternoon. He went out for a drive, and I followed him and lost him. He came back to his house about 10 o'clock. I kept his house under surveillance for some time after he came back, and then discontinued. On the 24th I left my hotel about 11 a. m. I saw my subject at the noon recess. I kept him under observation all the time. I did not have to follow him. He left at the side entrance. I was in that vicinity. I did not observe any of the other agents around. The subject went into a lunch room across the street. That afternoon he left with another man and they went down to 3rd and D and entered his car. I did not have a taxi to follow him. I do not know the name of the other man, but Merritt and Dwyer told me he was Juror No. 1. They were following him. The 3 of us did not go down the street together. We spoke to one another and then went off. I got a taxi and went to Herzog's home, arriving there about 3:30. Shortly after my arrival the subject left in his car and drove around the block, returning back to the garage. At that point in my report I state, "This party, upon leaving the subject, drove to where I was parked, and observed me very closely,
then drove back to the garage and conversed with
589 the subject. I then changed the position of my taxi.
Shortly after doing this the above stated man again drove by and observed me very closely." That is a true

and correct representation of what occurred. I could not describe that man. To the best of my recollection, after observing me very closely he went back and engaged in conversation with Juror Herzog. I changed the position of my taxi as I thought it a very good thing to do. I did not think I had been burned up. I moved on the next block, where I could still hold Herzog under observation. Then the man who had observed me closely and who had gone back to Herzog, again left Herzog and drove by me, observing me very carefully again. I remained where I was until the subject left. I followed him to his home. He arrived there after 5:00. I remained there until 7:00. Then the subject left his home with a middle aged woman, entered their car and drove to 15th and Maryland Avenue, where the woman entered a store. She got back in the car and the subject drove in a circular route to Loew's Palace Theater. In my report I state that he continued to stop and make short turns in the middle of every 3rd or 4th block until reaching Loew's Theater. I am pretty sure he did not look back. I do not know whether he had a rear vision mirror in his automobile. This is the evening of the same day that the man had come by me twice and observed me very closely. I do not recall what route Herzog took to the theater. I stayed around the theater until he came out and then followed him back to his home, and discontinued about 11:30. The following day, the 25th, I returned to Philadelphia. Ruddy instructed me in my hotel room, to return. Ruddy, O'Reilly and Stewart were present. He gave me no reason for sending me back. I do not recall whether or not I saw Ruddy on November 6th in the office of the Burns Agency in Philadelphia, to-
590 gether with Stewart and McMullin. In the period between October 25th and my reappearance in Washington as a government witness, I saw Ruddy in Philadelphia. I was at the office on different days. I do not recall just what days I saw Ruddy. I do not recall anything about being in the office on Sunday at all. I do not recall whether or not I saw McMullin in Philadelphia after returning from Washington on October 25th. I saw Stewart on several occasions at different times. I saw him one or two days after getting back, and several times during that week.

Thereupon the following occurred:

Q. State whether or not there came a time after your departure on the 25th that you received instructions from Mr. Ruddy to return to Washington.

Thereupon the question was objected to as immaterial, the objection was overruled and an exception duly noted and the witness continued:

I received a subpoena. I don't recall what day it was or who was present. I am not certain whether I discussed the receipt of that subpoena with Ruddy. I might have mentioned it to him, but don't recall where. I am rather certain I did not. I did not see Ruddy outside of the office in Philadelphia during that period. On the occasion when I saw Ruddy and Stewart, I was in the office of the Burns Agency. I don't recall seeing Stewart and Ruddy and McMullin together in the Burns office in Philadelphia on Sunday afternoon, November 6.

Thereupon the witness was cross-examined as follows:

I testified that the first day I followed Herzog home, I stood on the corner of North Capitol and observed his house at 36 New York Avenue, N. E. I stayed there and watched the house. I say in my report, "I kept the same under close observation." That is what I mean by "observation." The house is about the center of the
591 block. It is a very long block.

Thereupon the witness was examined by the Court as follows:

I testified that on the 24th when I reached the juror's house after 3 o'clock I found him there, and he drove around the block and returned to the garage. Then I testified I observed another car around the subject's home, driven by someone. I observed this person who observed me. He would drive by in his car. I was sitting in the taxi at the time he did this, and he gave me a side glance. I though he was looking at me, but he might not have been. Then shifted the position of my taxi. I thought that if this man was really observing me, I would try to get some place where he could not see me. I moved a square away,

but where I could still keep the garage of the juror under observation. When Herzog left the garage and went home that afternoon I followed about a block in back of him. He took a fairly direct route home, taking 10 or 15 minutes. About 7:30 o'clock he left his home, accompanied by a middle aged lady, and they drove to this confectionery store, and from there they drove to the theater. He didn't make any stops from the store to the theater. He would come to an intersection and he would look and turn, as if he were going down the other street, and as if looking for some number, and then would turn down the other side of the street. He did that 3 or 4 times. He did not get out of his car on any of those occasions. It took him less than a half hour to drive from the store to the theater. I couldn't tell how far it was.

Thereupon **Thomas F. Brennan** was called as a witness for the United States, and, being first duly sworn, testified as follows:

592 I am 24 years old and reside at 91 Singer Street, Astoria, Long Island. I am at present employed by the Burns Detective Agency and have been so employed for two years, in the Miami office and the New York office. In pursuance of my duties I came to Washington in October, arriving the morning of the 19th. I was engaged from that day on in shadow work with regard to jurors in the Fall-Sinclair case. I was engaged about 6 or 7 days. I wrote out reports each day while engaged, and rendered them to the manager of the Agency.

Thereupon the witness was handed Government's Exhibits 193, 201, 214, 228, 244, 260, 274 and 288, which he identified as his handwritten reports from October 18 to 25, inclusive.

Thereupon the witness continued:

While engaged on this operation I carried out certain instructions from Ruddy. I used my regular designation, B-4, and inscribed that on my reports. In New York Manager Scanlon instructed me to go home and pack my bag and go to the Union Station, Washington, and meet Ruddy. Dwyer and Klein were there. No reference was made to

the Fall-Sinclair case that I can recollect. I knew that I was going to do surveillance work, but I hadn't the slighest idea in what connection. I didn't know that I was to do work in the Fall-Sinclair case until I had arrived in this city and seen Ruddy. I didn't see Dyer after I left the New York office until I got to Washington. I believe Klein, O'Neill and Dwyer were on the train with me, but I did not see them. I left the train about 7:00 a. m. I met Ruddy at 7:00 and was instructed by him to go to the Plaza Hotel and wait there until he telephoned me. That is all he told me. I had known Ruddy in the Miami office, and worked under him there. There were no other operatives staying at the Plaza Hotel at that time that I knew of. About 11:00 I received a phone call from Ruddy
to report to him in Dwyer's room at the Commodore.
593 I went over there. Dwyer, O'Neill, Robbins and
Ruddy were there. I had left my credentials in New York. I had not been instructed to do so, but I always do when I leave there. Ruddy did not ask me if I had them, nor do I think he asked any of the other agents on that occasion. I received a slip of paper with a man's name and address on it, his business address, and I was told he would sit in the second chair in this court room. The man's name was Bradner W. Holmes. That is all the paper contained. I have never seen Government's Exhibit 1 before, and I never heard any of the information it contains about Holmes before. That slip was typewritten. I have not got it now. The last time I remember seeing it was a day or two after it was handed to me. I may have carried it, but I do not remember what I did with it. Ruddy told me to be very careful. He cautioned me against talking to the juror, and in case the juror should suspect I was following him and should ask me why I was following him, I should walk away and not answer him, and act as if I were crazy. That is all. He did not tell me not to reveal the fact that I was a Burns man if accosted. We never do that. He also told Dwyer and O'Neill that we would get fired if we talked to a juror. I was cautioned twice about that. I was not told anything about that in New York. I say in my report, "I went to that place immediately and received further instructions." I refer there to the Commodore. Then I say, "Since it

was almost lunch time before I had received final instructions, I waited until after one o'clock before going to the place." There I refer to the court house. Where I say "Arriving at the place shortly after 1:00 o'clock," I refer to the court house. I say before that, "I was given the position of my subject and instructed to get in the place immediately for the purpose of getting an opportunity to look at him and know who he is." I refer here to
594 the court house. That is another way of saying that I was instructed to get a designation on this man and hold him under surveillance. My instructions were really, just to pick up this man and hold him under surveillance, and of course I was left to my own resources. My reports contain a true and correct representation of what I did as a Burns agent while engaged in this operation. I got to the court house about 1:00 o'clock. I waited outside in the corridor. There was quite a long line waiting at the beginning of the afternoon, and about 10 minutes before court adjourned for the day I succeeded in getting in, and I sat on the last bench in the corner. I was in not more than 10 minutes. I saw my subject. When I left the court house I picked him up. He came out the west door and stood around there for a few minutes with several of the other jurors. I think I saw most all of the Burns agents from time to time, but I do not have any recollection at all of seeing anybody standing around at any certain time in any certain place. I did not see them there. Holmes walked to the corner with two other men, who left him there. He walked to 8th and F where he met a man and stopped and talked to him for a few seconds. Then he went to the place where he worked, Woodward & Lothrop. I have been engaged in surveillance work for 2 years. My report says, "Although I followed him at a great distance, I did not see any one I thought might be following the subject." That is correct. I then waited around on the corner and about 6:10 he came out and I followed him home. He went by trolly and I got on the same car, not at the same time he did, but a little later at the same stop. It was a one man car. He went to the back of the car and

I stayed in the middle, with my back towards him. He left the car at P Street, and I got off before he did. I
595 did not follow him all the way home. I watched him as he went down the street. When he entered his house I was a little less than half a block away. I did not see anybody follow him home. I kept his house and the vicinity under surveillance until about 10:00 o'clock. There was a party parked on the other side of the street. I made a note, "His being there probably might, and probably does mean nothing at all." I wrote that at the time. My subject did not go out that night that I know of. I saw a man, not the subject, come out and go to a grocery store at 3rd and P, make a purchase, and go back to the house again. Toward the end of my report I say, "Note—Because of the neighborhood of the subject's house I thought it was best for me not to remain long in any one place. Therefore, since I have to watch for anyone who might also be keeping the subject under surveillance I spent my time in walking around, standing on corners only a few minutes at a time." I had not been informed by any one that this juror was under surveillance on the part of anyone else. I thought I was watching him to try and find out if he was followed or trying to be approached. Ruddy told me that. Which reminds me that at the Commodore he instructed me to report to him if anybody tried to approach the juror, or followed the juror and looked as if he was trying to approach him. He did not tell me that any one was actually following or shadowing the juror at that time. He did not tell me that the juror had any guards. I have told everything that I can recollect that Ruddy said on that occasion. At the end of my report I say, "I do not think there is anyone watching the subject unless his house is being kept under surveillance from inside from another house, or from a darkened room in the Colored Trade School across the street." That was my opinion, founded on the fact I had not seen anyone else covering my
596 man that day. On the 20th I left my hotel about 7:40 and went to the vicinity of Holmes' house. He came out about 8:30, got on a trolley car and rode to his place of business, which he entered. He came out later, and went to the court house, and entered by the main entrance. I waited around outside. He came out shortly

before 1:00 o'clock and went to the Coffee Shop across the street. I saw that same Mr. Holmes in this court room, since the beginning of the present proceedings, on the occasion when all the jurors were requested to stand up. At 3 o'clock he came out and went across the street with the other jurors to have their picture taken. They stood around and talked a little while and then he walked to his place of business. I picked him up when he left there that night and followed him home. I got on the same street car he did and got off a block before he did. His address is 205 P Street. I kept his house under observation until 10:00 o'clock that night and then discontinued. On the 21st I left my hotel about 7:00 and went to subject's home. I followed him from there to his place of business and from there to the court house. got on the same trolley car. At mid-day he came out and went to the Coffee Shop. After coming out of there he went to the comfort station at 5th and E, and then to his place of business. He came out of there about 6:15 and went home. I got on the same trolley. I kept his house under surveillance that night and discontinued and went back to the hotel and to bed at 11 o'clock. About 12:20 O'Reilly called me and said he would not be over for my report and told me to come over and bring it. I got dressed and went over to his room in the Mayflower in a taxi. When I got there Klein, O'Neill, Dwyer, Merritt, Kirby, Ruddy and Robbins were there. I forget whether Knowles was there then or came in
597 later. McMullin was not there when I came in. It was not much later than 12:30 when I got there. I was there more than half an hour. I met Knowles and as we had not seen each other for quite a while we talked about Miami. I was talking to him when I heard my name called and I looked up and Ruddy was talking to O'Neill about some subject living in the suburbs, in a difficult neighborhood. Ruddy said, "Brennan, you go with O'Neill tomorrow, and he will give you the designation on the man that he is following. I want to see what you can do with him, see if you can hold him under surveillance. It is a hard neighborhood out there. You have got to get up early in the morning." I said all right, I don't know exactly what else happened. Most of the fellows left before I did.

McMullin came in and went out while I was there, as did Stewart. I think I saw most all of the boys that night, except Steer. He wasn't there yet. I think I have told everything Ruddy said. Ruddy did not tell me that something had gone wrong with the Sinclair case that day and that was why he wanted us all there that night. There was no mention of the Fall-Sinclair case. I do not recall discussing my juror with anybody. O'Neill's juror, Goucher, was dismissed, in view of the difficulty of keeping him under surveillance because he lived in the suburbs. That is all that was said about him. There was no discussion as to Juror Kern. I do not think I heard any instructions given Dwyer. Merritt was talking to him, but not about jurors on the case. I heard nothing said with reference to Kern's brother. I heard nothing said by Ruddy to Merritt with regard to Kern. I did not hear anybody else telephoned to to come to O'Reilly's room. O'Reilly did not telephone. Ruddy and Robbins were sitting at the desk in front of the telephone. I do not think they had any papers be-
598 fore them. Ruddy had some pink slips, because someone wanted some money. I did not see Government's Exhibit 1 in Ruddy's possession that night. I have told all that transpired on this occasion. On the 22nd I left my hotel and met O'Neill. We went to the vicinity of Goucher's home in a taxi. Goucher came out about 7:30 and drove to his place of business. We took his license number. When he entered his place of business O'Neill left and called Ruddy, who told him to tell me to return to my hotel and await further instructions. I went to my hotel. Ruddy or O'Reilly phoned me and told me to go and relieve Kirby, as the people in the neighborhood where he was suspected him of being a narcotic man or a prohibition agent. I went there and met him, and he told me that he had rented a room across the street where he could watch in safety. I tried to phone Ruddy and O'Reilly, but couldn't, so about 9:00 I left as everything looked all right. I called O'Reilly and told him the circumstances and that it was all right. Then I went to my hotel, the Plaza, and called O'Reilly. I said I was doing nothing and he asked me to come over. I wrote my report and took it over with me. This report has a certain matter stricken out. I

struck that out. As I was going up in the elevator in the Mayflower I met Dwyer, Merritt and Steer, O'Reilly was the only one in his room. After a while McMullin came in bubbling over with joy about an airplane ride he had had. No one else was there. Ruddy wasn't there, nor was Robbins or Homrighausen or Kirby. There was no discussion on that occasion about Kern's brother. The only juror discussed was Glasscock. We were talking about social matters. McMullin came in talking about the plane ride, and we told him to stop talking shop or get out. Merritt, Dwyer and Steer did not tell me they had been working to-
599 gether on Kern's brother that day. They did not tell me anything about what they had been doing that day. There was no suggestion as to anything they had done that week on that operation. O'Reilly said nothing with regard to their activities. McMullin also talked about an automobile tire that he wanted to collect for. That is all. I don't know how long I stayed, possibly two hours. This was the second night I had gone to the Mayflower at midnight. The first occasion was on the morning of the 22nd, just after midnight of the 21st. The second occasion was on the night of the 22nd, running into the morning of the 23rd. On this 2nd visit, O'Reilly said nothing about Sinclair suffering a setback the preceding day in court. There was nothing at all said along that line. There was no mention of the case except for this conversation of McMullin. Sinclair's name was not mentioned. I did not see Day on the occasion of either of those visits to the Mayflower. On Sunday the 23rd I got a phone call early in the morning from O'Reilly telling me to wait at my hotel until he came. I waited there, and Steer came over and talked to me for a while, and told me O'Reilly was coming over. O'Reilly arrived about 2 p. m. He gave Steer some work to do, and told me he had nothing for me, but that I should wait where I was so I could be reached. I remained there. I don't know what instructions he gave Steer. I was in sight, but I couldn't hear. This conversation took place on a bench in front of my hotel. I sat on another bench and read while they talked. I heard nothing said about people named Vogt. All I heard was the fact O'Reilly had something for Steer to do. I heard no names mentioned. O'Reilly did not take Steer out of earshot. I

walked to the other bench. There is a rule in the Agency that no man ever tells another man what he is doing
600 on an operation, and no man usually tries to find out what another man is doing or what he is assigned to. All the rules of the Agency were observed as far as I know. Steer left shortly afterward. He didn't tell me what he was going to do. I was assigned that day to find out who Josephine E. Hopkins, 1362 Otis Place, N. W., was. I was not told that she was a member of the jury. I am quite sure she was not. I went with O'Reilly and Long to the Tax Collector's Bureau, and O'Reilly looked up these numbers that Long had turned in. This was one of them. Long said that this car had followed his subject's car one day. We had quite a conversation with McMullin while O'Reilly was looking up the numbers. When O'Reilly came back he handed Steer the license number of Horace R. Lamb and gave me the one of Josephine E. Hopkins. He said to me, "Find out who it is and place her under surveillance. Long thinks that they are trying to tamper with this juror they are following." He told us to go out and find who these people were, and I told him we were going together, and then I would come and tell him who they were. Steer and I went to some hotel in the vicinity and we first looked up Lamb and found he was the Special Assistant to the Attorney General, connected with the Department of Justice. That directory was very similar to the one you have now. Steer had a pencil and piece of paper, and I read the name off to him and he wrote it down. I might have made a mistake and said, "District Attorney," instead of "Attorney General." I am not sure which I read to him. I read off this business, and Department of Justice was part of it. As I read it from the directory here that you have, it is "Lamb, Horace R. Spec. Asst. to Atty. Genl. Justice Dept. & Racquet Club." It is almost all abbreviated. I think that
is the entry. It might have been some other book
601 that we looked at. I did not shadow Miss Hopkins. I looked up this name and address in the City Directory, and found no Josephine Hopkins there. I did find F. W. Hopkins, an examiner in the patent office and his address was given as the same address I had gotten for Josephine Hopkins. I went out to the house and found that

there was a garage in the back of the house and there was no car in it. The doors were open. I watched until about 6, when a Chevrolet with license U-202, the number I had looked up, drove in the garage. I spent my time between that alley and the front of the house. I think I was shadowing Mr. and Mrs. Hopkins. I kept the residence under surveillance from the time I got there, 3 or 4 o'clock, until about 10:00 o'clock, at which time the elderly couple I had seen were leaving the house, returned to the house and went inside. I left a short time after that. On the 25th I returned to New York at Ruddy's direction. He instructed me at the Plaza Hotel about 2 p. m. Ruddy, O'Reilly and Robbins were present. He told me to pack up my bag and go to New York. He told me I had done fine work. That is all. I returned to New York with Klein. I wrote a report that day.

Thereupon the witness was cross-examined as follows:

At the meeting at the Mayflower early Saturday morning, the 22nd, I stated that I saw all of the men except Steer. I did not mean that I saw them all there at one time, but I meant I saw them at different times. I should say about 5 or 6 was the largest number of men that were there at one time. Pink slips are regular forms that are signed by investigators who want to draw money in advance of their salary. They are receipts. That is what Ruddy had in his hand. They were the only papers that I saw in his hands. That evening, the 22nd, I was invited by O'Reilly to come to his room. I met three oper-
602 atives in the elevator of the hotel. After a while McMullin came into the room. I said he was bubbling over with an airplane ride that he had had that afternoon. He seemed to be tickled to death. He came in the room and the first thing he said was, "Well, I have put something on you fellows today; I had an airplane ride," and he went on to talk about it. He said it was his first ride, and it was wonderful, and he described his feelings. He asked O'Reilly how he was going to get the five dollars back that he had spent on the ride. O'Reilly asked him if his subject took a ride. He said, "No. There was an Oakland Roadster following my subject, and it dropped out. I held my subject for the rest of the time, and later

my subject drove out to this air field, and when I got out there this two-toned Oakland Roadster was parked out there, and my subject and this other man were talking there together out of the car." He said there was a Pennsylvania car there and he went over and talked to the people in it to make things seem natural, but soon these men went up for a ride and he did not want to seem suspicious standing there doing nothing, so he went for a ride too. O'Reilly said, "If you went for a plane ride and paid $5 for it, and had good reason to take the ride, all right. I am pretty sure you will get your money." McMullin then said he wanted to get some money to buy a new tire, as he ruined a tire holding his subject under surveillance, as he had to run on a flat tire. O'Reilly gave him to understand he was pretty sure he would not get $26 for the auto tire. I think that was the extent of the conversation on that occasion. I saw McMullin on Monday morning, the 24th. While Steer and I were going down the street to the Tag Bureau, McMullin and O'Reilly picked us up in McMullin's car. They took us down to the Bureau.

603 O'Reilly went to look up the number, and I was talking to McMullin, or Long. He repeated the whole thing about the plane ride. He told me it was the Potomac Flying Field. I do not remember exactly how many tags were to be looked up that morning. The purpose of my visit was to look up the owners of cars bearing two tags. One was U-202 and the other was P-1738, which turned out to be Lamb's. O'Reilly did not say anything at all about P-1738 being more important than U-202. After the ownership of those two cars was determined, I was assigned to the owner of one to find out who it was, and another operative assigned to the other to find out what that one was.

Thereupon the witness was further examined by Mr. Burkinshaw as follows:

I have not had any conversation with Ruddy with a view to being called as a witness in this case, since the time I was served with a subpœna to appear here as a witness. I have not had a conversation with any of the respondents with regard to the testimony I was to give in this case. I did not have any conversation with any of the other Burns

agents with regard to the testimony I was to give in this case. I did not have any conversation with any of those persons with regard to the facts about which I have been interrogated here today.

Thereupon the government offered in evidence the following subpoenas, which were objected to on the grounds that they were hearsay and not proving anything, and were no evidence that anyone went out of the Marshall's office in an effort to serve the writs, which objection to Exhibits 347, 348 and 349 were overruled and exceptions duly noted, and objection to Exhibit 346 was sustained.

694 GOVERNMENT'S EXHIBIT FOR IDENTIFICATION 346.

"U. S. v. Sinclair et al. Govt. Exhibit for Identification No. 346 objected to and objection sustained.

"Supreme Court of the District of Columbia.

Criminal Docket.

No. 17, Criminal Contempt. 213.

THE UNITED STATES

vs.

HARRY F. SINCLAIR et al.

"The President of the United States to

C" Frederick V. Sikes, Apt. 201, 4921 Georgia Avenue, N. W.;
C Ruben A. Bogley, 1507 28th St. N. W.;
P Dan. P. Daugherty, 411 4½ St., S. W. (in ink:) P 18;
P Jessie Taylor, 1811 1st St., S. W. (in pencil:) Dec. (Paid) 20-21 Jan. 3-4-5-6-9-10-17 (ink:) 18;
C Randel Kidwell, Congress Heights, D. C. (in ink:) P 18;
C Mr. Norton, % Fred Drew Co., Inc., 2525 Pa. Ave., N. W.;
C Joseph McLaughlin, 814 B St., S. W. (in ink:) P-18;

C Maurice Horan, 411 4½ St., S. W. (in ink:) P-18:

(* All letters in this column in pencil.)

"You are hereby commanded to attend the said court on Tuesday, January 17th, 1928, at ten o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

Witness the Honorable Walter I. McCoy, Chief Justice of said Court, January 16th, 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,
By WM. T. ADKINS,
Assistant Clerk."

(And on the reverse thereof:) "Criminal Contempt No. 17. United States vs. Harry F. Sinclair et al. Summons for the United States. Criminal Court No. Two. Marshal's Return: Summoned personally all, the — day of ——, 19—. Not to be found: ——— ———. ——— ———, Marshal."

605 "GOVERNMENT'S EXHIBIT FOR IDENTIFICATION 347."

"U. S. v. Sinclair et al. Govt. Exhibit for Identification No. 347 objected to & overruled."

"In the Supreme Court of the District of Columbia.

Criminal Docket.

No. —. Criminal Contempt, No. 17. 213.

THE UNITED STATES

v.

HARRY F. SINCLAIR et al.

"The President of the United States to Frederick V. Sikes, Apt. #201 4921 Georgia Avenue N. W., Washington, D. C.:

(In pencil:) "Personal Service.

"You are hereby commanded to attend the said Court on Monday, the 19th day of December 1927, at 10 o'clock A. M.

to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

Witness the Honorable Walter I. McCoy, Chief Justice of said Court, the 17th day of December, A. D. 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk.

By ——— ———,
Assistant Clerk."

(And on the reverse thereof:) "Criminal Contempt No. 17. Criminal No. —. United States vs. Harry F. Sinclair et al. Summons for Criminal Court No. Two. Marshal's return: Summoned personally all the 17th day of Dec., 1927. Not to be found: Fred'k. V. Sikes; could not get personal Service. Edgar C. Snyder, Marshal. Denham, Deputy."

606 "GOVERNMENT'S EXHIBIT FOR IDENTIFICATION 348."

"U. S. v. Sinclair et al. Govt. Exhibit for Identification No. 348 objected & overruled."

"In the Supreme Court of the District of Columbia.

Criminal Docket.

No. —. Criminal Contempt No. 17. 213.

THE UNITED STATES

vs.

HARRY F. SINCLAIR et al.

The President of the United States to Frederick V. Sikes, % Mutual Insurance Company of Baltimore, Commercial National Bank Bldg.:

(In pencil:) "Personal Service.

"You are hereby commanded to attend the said Court on Monday, the 19th day of December, 1927, at 10 o'clock A. M., to testify on behalf of the United States, and not de-

part the Court without leave of the Court or District Attorney.

Witness the Honorable Walter I. McCoy, Chief Justice of said Court, the 17th day of December, A. D., 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,

By ——— ———,
Assistant Clerk."

(And on the reverse thereof: "Criminal No. —. Criminal Contempt No. 17. United States vs. Harry F. Sinclair et al. Summons for Criminal Court No. Two. Marshal's Return: Summoned personally all the 17th day of Dec. 1927. Not to be found: Fred'k V. Sikes; not employed at this address. Edgar C. Snyder, Marshal. Hawkins, Deputy."

607 "GOVERNMENT'S EXHIBIT FOR IDENTIFICATION 349."

"U. S. v. Sinclair et al. Govt. Exhibit for Identification No. 347 objected to & overruled.

The President of the United States to Frederick V. Sikes, 4921 Georgia Ave., N. W., Apt. #201:

"You are hereby commanded to attend the said Court on Tuesday, the 20th day of Dec., 1927, at 10 o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

Witness, the Honorable Walter I. McCoy, Chief Justice of said Court, the 19th day of Dec. A. D., 1927.

[SEAL.] FRANK E. CUNNINGHAM,
Clerk,

By WM. T. ADKINS,
Assistant Clerk."

(And on the Reverse side thereof:) "Criminal No. —. United States vs. ——— ———. Summons for #2. Marshal's Return: Summoned personally all the — day of ———, 192—. Not to be found: made 4 efforts unable to find Mr. Sikes home. Edgar C. Snyder, Marshal."

608 Thereupon **Donald King** was called as a witness for the United States and, being first duly sworn, testified as follows:

I am a news writer in the employ of the Herald Newspaper of this city. I was a news writer in October and

November, 1927. I know by sight Raymond Akers and Edward J. Kidwell, Jr. My absence after I was subpenaed as a witness was due to the fact that there was a death in my family which took me out of the city. On the 28th of October when I was in my place of employment, I received a phone call. The next day, Saturday morning, the 29th, I met Ray Akers. On the afternoon of that same day I saw Akers and Kidwell in Horan's near beer place on 4½ St., S. W. I walked north on 4½ Street from the corner where I got off the street car, to his bar room at 411 4½ Street. I entered the bar looking for Akers. I did not see him there. I asked the man behind the bar if he had been there. He said he was in a car standing in front of the place at that time. I went out to the car. He was sitting slumped down in the back seat, and with a cap pulled down over his eyes. I opened the door and reached in and put my hand on his shoulder. He looked up, and got up and got out. We went into the bar room, and as we approached the door Akers turned to 2 men who were standing just to the right of the door as we entered, and called to one of them and said, "Come in and have a drink, Eddie." This man fell in behind us. He was Edward J. Kidwell, Jr. who was then a petit juror in the Fall-Sinclair case and who has been a witness in this case. The 3 of us went in. Akers introduced me to Kidwell, "Mr. King, this is Mr. Kidwell." I asked Kidwell to have a drink. Akers and Kidwell, I think, both drank whiskey, or gin, and I drank a bottle of near beer. I paid the bill for all three. While the drink was being served Akers said
609 to me, "Mr. Kidwell is on the jury; and, of course, I knew who I had gone there to meet. He didn't bother to explain to me which jury. Akers said to Kidwell, "You are a fine bird to be on that jury. You know you couldn't conscientiously convict anybody else of doing anything." Kidwell protested that he had a clean record, and laughed about it. Akers said, "Why, you know you expect to get $150,000.00 or $200,000.00 out of that." Kidwell said, "Well, that is nothing to a man like Sinclair. He has plenty of money. There is no limit to how high that crowd could go if they wanted to." And Akers said, "Yes, here am I slaving away on a street car for a bare living, what

are you going to do for me when you get fixed up?" Kidwell assured him that he would be taken care of and said, "Don't worry." Akers said, "Oh yes, you will be riding around in a big car soon." Kidwell said, "Well, if I don't get one about as long as this block I will be kind of disappointed." It is impossible for me to recall the exact order in which this conversation took place. I was in no position to take any notes, and it was all disjointed, people coming in and going out of the place. During the conversation Kidwell mentioned the fact that he was receiving $5.00 a day for jury duty. Akers, I think it was, said that it was easy money, and Kidwell agreed and said that he wasn't paying a great deal of attention, but that he sat up there and listened when he felt like it. He described an incident in the jury room which had taken place during a recess of court when they staged a poker game, and one of the jurors went broke, and Kidwell said he had attempted then to start a crap game, and said that if he didn't get anything else he would get his out of the crap game if he could manage to start one. He expressed a great admiration for Mr. Sinclair and said that he was a very democratic fellow, that he came in the court room without any
610 fuss or feathers and chucked his hat in the corner; that he had so much money he didn't have to put on the dog. That it wasn't as though he had a little bit of money and was trying to live up to it. Kidwell mentioned some policemen who previously had been at the 4th Precinct who had addressed him and said that he was a fine fellow to get on a jury in a case like that and asked him how he had managed it, and Kidwell said that he was a good yes and no man, that he wouldn't let any of these smart lawyers make a fool out of him; that when they asked him a question he merely said yes or no. As far as I can recall at the moment, that is all the conversation that took place referring to this case. A man named Boss came into the place and said to Kidwell that he had been employed by the company and he heard Kidwell talking. He warned Kidwell that he should not discuss the case, being on the jury.

Thereupon the following occurred:

Mr. Crim: If your Honor please, I object to this, as it in no way shows any scienter on the part of the respondents, being in no way connected with them; it is among strangers to *to* them; it is a conversation started by this witness and another. For that reason I object to this testimony and move to strike out all that we have had along this line; no connection whatever with the defendants.

The Court: The question of its relevancy, I think, can be postponed. The objection is overruled without prejudice to move to strike at a later date.

Mr. Crim: Exception.

Thereupon the witness continued:

Kidwell replied that he was not discussing the issues. Boss said, "Well, you are talking too damn much anyhow, and I don't think much of what you are saying. If
611 I was on a jury and a man convicted, I would vote for a verdict of guilty, no matter how much he had or how rich he was or who he was." Boss expressed the opinion that members of the Doheny jury had been rewarded, in talking to Kidwell, and Akers and myself, all three being there. It was at that time I addressed a remark to Kidwell, the only remark that I directly addressed to him during the conversation. I said that Fall was an old man anyhow and sick, and Kidwell said he couldn't see any advantage to him in bringing in a verdict of guilty, while there might be some advantage in voting for an acquittal. As nearly as I can recall, that is the substance of everything that was said there relating to the case.

Thereupon the witness was cross-examined by Mr. Hoover as follows:

I arrived at 411 4½ Street about 2.10 p. m. I went there to keep an appointment I had to meet Akers there at 1.30 o'clock. I was late. When I got there Akers was sitting in a car in front. He was reclining. I don't know whether he was asleep. His cap was pulled over his eyes. No one woke him up. I went to the car and reached in and put my hand on his shoulder and he got up. Then he and I started in the place together. I saw two men standing near the door, to the right of the entrance. I had never

seen them before. Akers spoke to them. Only one of them came in. When he spoke to that man he said, "Have a drink, Eddie." The three of us went in together. I assumed this man he spoke to was the man that he had made an appointment for me; the man he was going to introduce me to. It was Edward J. Kidwell, Jr., who was a juror in this case. I went there for the purpose of meeting him; being introduced to him; primarily to listen to him; for the purpose of talking to him, if necessary. I had
612 not consulted any lawyer to see if that was a proper thing to do. I am not sure when Mr. Flynn, our manager editor, consulted Mr. Lambert, our attorney, but the telephone reached me at 11:30 p. m. I think I had some information from my managing editor that it would be all right for me to go to talk to this juror. I can't remember about that. I know that Flynn consulted Wilton J. Lambert, a local attorney, and President of the Washingington Times Publishing Company, with regard to the propriety of my talking to this juror; but when he did it I don't know. I didn't see him after he left the office at 1:00 o'clock Saturday morning. I don't know whether that was before I went down and saw this man at Horan's place. I had been told that the juror was talking. I had a right to listen. I don't recall whether I published in the newspaper that before I went to see this juror that I had been advised by counsel for the Herald that it would be all right. Perhaps I did. I do not deny it. Flynn had told me that Lamber said it was all right to talk to this juror, but whether before I went down then or afterwards, I don't remember. I had a conversation with Flynn and Lambert after I came back as to whether it would be all right to talk to a man with whom I had already talked. That was Saturday evening about 6 or 7. I saw the District Attorney about this matter Saturday evening. I first saw Burkinshaw, an Assistant District Attorney, in the office of the managing editor. I know how he happened to be there. I did not send for him. Flynn sent for him. Flynn, Frederick E. Shapiro, who was then city editor of the Herald, and I were there when he came. I repeated to Burkinshaw, in substances, what I have just said on the stand. Then I went with Burkinshaw to 2400 16th Street to see

Senator Pomerene. That was Saturday night. I also saw the District Attorney, Major Peyton Gordon there.
613 Flynn, Shapiro, Burkinshaw, Major Gordon, Senator Pomerene and I were present in Senator Pomerene's apartment. I talked with Lambert about 6 or 7 before I telephoned Burkinshaw. Then Burkinshaw came to my office. Lambert suggested that we should turn this information over to the District Attorneys and let them proceed. I had never heard of Burkinshaw before that, had no personal acquaintance with him. I told him to get Akers and bring him to my office on Sunday. Mr. Roberts was in Philadelphia on Saturday night. I did not have Akers with me on Saturday night when I saw these gentlemen. I did not make an appointment to see Burkinshaw with Akers on Sunday, but I saw Burkinshaw. Flynn sent for him to come there again. I then had Akers there at the Herald office. Flynn, Burkinshaw, Akers and I were present. That night Burkinshaw, Akers, Flynn and I, accompanied by Mr. Chandler, who is associated with government counsel, went to the Transportation Building, where we saw Senator Pomerene, Owen J. Roberts, Major Peyton Gordon, and two secret service operatives, Myles McCahill and Joe Murphy. I do not recall how Chandler joined me. Following that I made an affidavit, which was filed in this Court on October 31st. I recall having made oath to an affidavit on October 31, 1927. It was filed in Court the following day, November 1. I was in Court that day.

Thereupon the affidavit of the witness was marked by the Clerk "For identification, King No. 1."

Thereupon the witness continued:

I recognize my signature on the last page of this affidavit. I made oath to that on October 31. I do not know who prepared that affidavit. I was not present at the time it was dictated by anybody, or typewritten by anybody. I was in Burkinshaw's office when I made oath to it. Burkin-
614 shaw, Akers, and the Notary Public, Schenken were present. I first saw this affidavit on the afternoon of October 31 about 4 or 4:30, in Burkinshaw's office. Either Burkinshaw or Schenken presented it to me. I am not sure. I read it over carefully before I swore to it.

Thereupon the following occurred:

Q. Did you undertake to set out the conversation that occurred between you and Kidwell at the Horan place on the afternoon of October 29th? Do you understand my question? A. I understand what you are trying to get at, yes, sir.

Q. What am I trying to get at, according to your understanding? A. That there are certain statements I have made on the stand today which are not contained in that affidavit, and you want to know why, that is obvious.

Q. Tell us why? A. Because when I went to the grand jury room that was the first time that I had ever given testimony in my life. I have been writing for the newspapers for 10 years and when I sit down to put things on paper they come easier. I have been writing for the papers——

Q. (Interposing:) What do you mean by that answer? A. There it is.

Q. But what has the statement you made before the grand jury to do with this affidavit? A. That affidavit was written from the testimony that I gave before the grand jury.

Q. How do you know that? A. Because someone sat there and took notes.

Q. Who was taking notes? A. One of the As-
615 sistant District Attorneys. I do not know his name.

Q. How do you know that the affidavit was prepared from the testimony that you gave before the grand jury? A. Because I sat there in Mr. Burkinshaw's office, after having given my testimony before the grand jury, and waited until the notes had been typewritten and were brought to me to sign.

Q. Why didn't you tell us that a while ago when I was asking you about swearing to the affidavit? A. You didn't ask me about that.

Q. Didn't you say, in answer to my question, that the first time you ever saw that affidavit was when you saw it in Mr. Burkinshaw's office? A. That was the first time I ever saw the affidavit.

Q. What I want to find out from you is just how this affidavit was prepared, so far as you know.

There were two Assistant District Attorneys who sat at the table in the grand jury room while I gave my evidence. I do not know what their names are. They took notes, and when I had completed my testimony I went and sat in Burkinshaw's office. Akers went in and gave his testimony and when he finished he came into Burkinshaw's office and we sat there until the Notary or Burkinshaw, I do not recall which one, came in with the two affidavits, and then we signed them. Before this affidavit was prepared I had repeated to Burkinshaw the story I told in the grand jury room. Whether I said anything more or anything less than I said in the grand jury room, I do not know. I did not come out of the grand jury room and go into Burkinshaw's office and there repeat to him the testimony
616 that I had given before the grand jury. I sat there and waited for them to bring the affidavit for me to sign. He did not tell me to wait there, that I recall. My business is writing and not talking, and writing things comes easier to me. This conversation was disjointed and impossible to get straight. I went to Horan's place Saturday afternoon, October 29th. Before that day I had not been here in Court reporting the Fall-Sinclair case. When I went down then I got off the car at a square south of Horan's, and then walked north on the west side of 4½ Street to Horan's. I went into the place and then came out again. As I went in I observed 2 men standing near the door. I am not positive whether there were 2 or 3. I did not pay any attention to them. I did not know who they were. Then I went to the automobile and put my hand on Akers' shoulder. He got out of the car and he and I started in together. As we started in he spoke to a man and asked him to come in. When we went in, we went to the bar, towards the rear of the building. It is a long narrow room, the bar running lengthwise. We all went to that point together. Akers introduced me to Kidwell. I am not sure whether he introduced me before I asked Kidwell to have a drink, or whether it was while the drink was being served. He said, "Mr. King—Mr. Kidwell." At that time Akers did not say anything about my working at the same place he worked. He did about 10 or 15 minutes after we had been there. I ordered a drink, and put the money on the bar when it was brought. I think it was a one dollar bill.

Kidwell may have addressed a remark to Horan just at the time we were standing at the bar. I do not recall. I did not hear Kidwell say to Horan, "Come in the back room, I want to speak to you." I saw Horan go into the back room and heard Kidwell call to him and ask him to wait for him, that he wanted to speak to him. He
617 followed Horan into the back room and stayed in there 2 or 3 minutes. Before this Akers had remarked to me that Kidwell was on the jury. I deny that I asked Kidwell if he was still on the jury. When Kidwell came out of the back room, Akers was toward the front of the bar. I was standing where Kidwell left me, in the rear of the bar. I was leaning on the bar with my left elbow on it. I had my pocket-book in my left hand. I do not think I had any money exposed to view in my left hand. The only time that I recall exposing money was when I paid for the drink. I never had a roll of money in my hand at any time. At the time Kidwell came out of the back room I do not remember what I had in my left hand (witness illustrates how he held his pocket-book in his left-hand with his elbow in the bar). I opened the pocket-book in order to take the money out of it. At that time I dare-say I had my elbow on the bar also. When Kidwell came out of the back room he asked me if I was Akers' brother. I told him no. What made him think so? He said that Akers' brother had been in there looking for him, and he thought that it might be me. Akers was then towards the front of the bar. A man in the front of the bar was receiving race results by telephone. Just after Kidwell came back I said that I wished I had gone to Laurel that day, because I had picked 2 or 3 winners. I also mentioned the fact that the previous day I had won $68 at Laurel. Part of the remark "I wish I had gone to Laurel; if I had I could have won a lot of money, but I have a lot of money anyhow" is correct. I said that I wished I had gone to Laurel, that I might have made some money. I am positive I did not say I had plenty of money. After I told Kidwell I was not Akers' brother, he asked me if I worked for the street car company. I told him yes. I made that remark very loudly, because Akers was walking back towards us, in order
618 that Akers would overhear it. My reason for that was that I went down there to obtain certain infor-

mation. Akers said to Kidwell "You are a fin*d* bird to be on a jury. You know you could not conscientiously convict anybody else of anything." Kidwell laughed and said he had never done anything, protested that he had a clean record. I am positive I did not say anything. Akers said to Kidwell, "You know you are going to get a lot of money out of this thing, $150,000 or $200,000." That is all Akers said at that point. I said nothing. Kidwell said, "Well, that is nothing to a man like Sinclair. There is no limit to how high a crowd like that can go if they are disposed to," or words to that effect. I have told all I can recall he said. I have not read my affidavit for two months (witness reads his affidavit).

Thereupon the following occurred:

Q. Do you find anything in there to the effect that Akers said to Kidwell "Why, you know you expect to get $150,000.00 or $200,000.00 out of it?"

The question was objected to on the ground the affidavit speaks for itself, the objection was sustained and an exception duly noted.

Q. You made this affidavit, executed it, on the 31st of October, 1927, did you not? A. Yes, sir.

Q. Now, I call your attention to this portion of the affidavit: "That Akers stated to Kidwell in the manner of an inquiry that he supposed Kidwell was figuring on getting something out of this, and that Kidwell said in response that Sinclair had plenty of money, that money was nothing to him, and that there was no limit to what he might do if he wanted to." Did you make that statement
619 in that affidavit? A. I could not have sworn to it, if that statement had not been made, your Honor.

Q. Now, I ask you if it is not a fact, according to your statement of what happened there, that Akers stated to Kidwell in the nature of an inquiry that he supposed that Kidwell was figuring on getting something out of this, and that Kidwell said in response that Sinclair had plenty of money, that money was nothing to him, and that there was no limit to what he might do if he wanted to? Is that the statement that Akers made at that time and the reply that Kidwell made?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Is it not a fact that on the occasion in question down at Horan's on October the 29th, that Akers stated to Kidwell that he supposed Kidwell was figuring on getting something out of this, and that Kidwell said that Sinclair had plenty of money; that money was nothing to him, and that there was no limit to what he might do if he wanted to? A. Not in those very words, no, sir. That is the substance.

Q. Just why did you put it in that affidavit in that form and swear to it? A. I didn't swear to it.

The question was objected to, the objection sustained and an exception duly noted.

Q. I again ask you if you did not read that affidavit over before you swore to it. A. Yes, sir.

Q. And did you undertake to swear to the truth
620 when you made oath to that affidavit?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Is it not a fact that you did not put in this affidavit or have put in the affidavit the statement which you now made on this witness stand to the effect that on the occasion in question in Horan's place that Akers said to Kidwell, "Why, you know you expect to get $150,000 or $200,000 out of that?"

The question was objected to, the objection sustained, and an exception duly noted.

Q. I ask you to look at this affidavit and state whether or not you find in there the language which I will now read to you (handing paper to the witness). That Akers said to Kidwell on the occasion at Horan's place: "Yes, here I am slaving away on a street car for a bare living. What are you going to do for me when you get fixed up?" Do you find that in the affidavit?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Do you find anything in there to the effect that Kidwell said to Akers, "Don't worry?"

The question was objected to, the objection sustained, and an exception duly noted.

It is not a fact that when I first went into this place and saw Kidwell, that I said to him: "Are you still on the jury?" Kidwell did not say to me that he could not talk with me about the jury. The only remark that I addressed directly to Kidwell in connection with the case was to the effect that Fall was an old man and very sick. I did not make any indirect remarks to Kidwell. I did not talk to Akers about the case so that Kidwell could hear
621 me. I had been in there a half hour, or three-quarters of an hour before Boss came in. We were there together about 2½ hours. Kidwell at no time said that he did not want to talk about the case. I am positive of that. I have not the remotest idea how much time was spent in talking about the case. The conversation was very disjointed and interlarded with comments on the races and with my payment for the drinks, and Kidwell went out once during the conversation and subsequently came back. He left the place entirely for 15 or 20 minutes. While he was out I remained there. He said he was going to borrow some money and that he was coming back. He went out with someone in a Ford car, I think. I do not know who the man was he went with. I did not meet Randall Kidwell there. I have seen him in court here. I do not know whether he is the man that went out with Edward Kidwell. Everything that was said about the trial, what I have given in my testimony here, was said before he went out. When he came back I did not resume the talk about the trial. I was waiting there because the witness had made certain remarks which led me to certain conclusions I desired a little more information to verify. I wanted more definite information. When he came back I tried to detain him. I asked him to stay there and have another drink, which he refused. I didn't get any further information. Of course I tried to get further information by keeping him there, affording him another opportunity to talk. Not by asking him any questions. Akers asked him no questions

when he came back. I did not try to get Akers to ask him questions when he came back. When he came back the second time he remained long enough to buy a bottle of something to drink. The man went to the back room and got a bottle and brought it out and Kidwell paid for
622 it and went out of the place with it. I asked him if he would have another drink, and he declined. Before he went out the first time he had had two drinks in my presence. I paid for both of them. It was not my object to try to get him drunk so he would talk. I didn't have to get him drunk. He talked without it. I invited him to have another drink when he came back, because I desired to afford him another opportunity to talk. He would have remained there and drank it. I was giving him drinks so that he would talk and would have time to talk.

Thereupon the following occurred:

Q. Is that your explanation of why you were giving him drinks?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

Boss came in before Kidwell went out the first time. Boss went out before he came back. When he came back, Akers, Horan and I were there. There was no one else that I knew. At the time Kidwell left Akers went to the door following him. Akers did not say to Kidwell, "Come back, I have something very important I want to say to you." I don't recall his exact words. He said to come back, that he wanted to talk to him. Kidwell said no, he wasn't coming back at all. Kidwell then went away. During the time I was engaged in conversation with Kidwell at Horan's, I moved back and forth several times. I did not follow Kidwell nor did he follow me, as far as I can recall. It is not a fact that soon after I went in there that Akers and I stood at the rear of the bar and Kidwell went up towards the front, after Kidwell had come out of the rear room. I don't remember how long I remained there before the posi-

tion of the persons was changed. Some 10 or 15 minutes after Kidwell came back from the rear room I walked
623 to the front of the bar and left Kidwell standing talking to Akers. This was after Kidwell had said something about his jury service. Then I went back where they were. Before Kidwell went out I do not recall that he went up to the front of the bar and that Akers went up several times after him to bring him back. We were there 2½ hours. It is difficult to recall. I went down there to get a news story. We published a story on Tuesday morning predicting that there would be a mistrial. But the story that I have related here on the stand was not published until Wednesday.

Thereupon the witness was cross-examined by Mr. Crim as follows:

I first saw Akers about 7 or 7:30 on the morning of Saturday, October 29 at the boarding house where he lived, 206 7th Street, S. W. I had an appointment to see him at the car barns. He wasn't there. I waited two hours and then I went to his house. I was at the car barns at 5:25 A. M. the 29th. I made that appointment by telephone about 11:30 or 12 Friday evening. Immediately after this telephone call I had a conversation with Flynn. Then I had another conversation with Flynn about an hour later. I had only one conversation on Saturday with Akers. That was by telephone and I arranged to go to the car barn and meet him next morning, and if possible get an affidavit from him. I had not planned to get in touch with Kidwell through him until I found I couldn't get the affidavit from him. After I had seen Akers at his home on Saturday morning I did not talk with Flynn before I went to Horan's place. Before I went to Horan's I talked to the man who was on the day city desk and told him I was going to Horan's. At about 7:30 the 29th I went to Akers'
624 rooming house. I asked him if he would make an affidavit detailing what he had heard Kidwell say on a previous occasion. He refused. I urged him, brought pressure to bear as much as I could to persuade him to sign this affidavit. Still he refused. He said that I was a newspaper man and he had given me the lead and I would

have to take it up myself, and I told him, "Yes, but I don't know this man. I have never seen him before in my life. How can I get in contact with him?" He said it was up to me. Eventually I persuaded him to take me to Horan's, where he would introduce me to the juror, Kidwell. I did not have an affidavit with me at Akers', nor did I draw one there. I arranged there with Akers that he would ask all questions at Horan's when I met Kidwell there. Kidwell didn't say to Akers, "I'll fix you up," in response to Akers' suggestion that Kidwell would get $150,000 or $200,000; that Sinclair had plenty of money. Akers said, "Here I am slaving away on the street car for a bare living. What are you going to do for me when you get fixed up?" Then Kidwell smiled and said, "I'll fix you up." He didn't say to what extent he would fix him up.

Thereupon the following occurred:

Q. The conversation started off with a mention of $150,000 or $200,000 in so far as money is concerned, and it ended by saying that Kidwell would get his anyhow out of a dice game, didn't it?

The question was objected to, the objection sustained and an exception duly noted, and the witness continued:

There was very little of the 2½ hours devoted to the actual discussion of the case. Immediately after my conversation on Friday night with Akers I talked with Flynn, and he immediately talked to Lambert. Flynn told me that Lambert said to him that he could see no objection
625 to my listening to the juror talk since it was our intention to further the ends of justice rather than to obstruct them. I am a re-write man on my paper. I have not been re-writing the material that came in on this Sinclair-Fall trial. I was not in the court room during that trial.

Thereupon the following occurred:

Q. On Wednesday morning after this interview with Kidwell you published your interview with Kidwell in your paper?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I wrote when I went back to my office after this interview what had transpired at Horan's place. I wrote that late Saturday night, or early Sunday morning. I wrote it with a view to it being published in my paper some time. It was not published as I wrote it then precisely. Certain developments which took place between the time that I first wrote the substance of my interview with Kidwell and the time that the stories were published were added on to the story. It was published the following Wednesday, November 2nd. I wrote more than one article with respect to the Kidwell incident for my paper to publish at some time. I did not get a bonus for this work. My salary was increased.

Thereupon the following occurred:

Q. And it was increased as the result of your work in connection with this matter, was it not?

The question was objected to, the objection sustained and an exception duly noted.

Q. When was your salary increased?

The Court: How is this within the scope of the cross-examination, Mr. Crim? I think you have pursued that far enough.

Mr. Wright: An exception is reserved to sustain-
626 ing the objection.

Q. Now, with reference to the statement that Kidwell made, in substance, that he was more interested in an acquittal than a conviction, in the case then under consideration—do you understand what phase of it I have in mind? A. Yes, sir.

Q. Now isn't it a fact that that did not occur on that occasion, that conversation, but occurred on a previous occasion and was narrated to you by Akers? A. No, sir, that is not true.

Q. Did you not write, previous to November 2nd, with reference to the interview at Horan's, these words: "Not in so many words did Kidwell voice his intention of hanging the oil jury, although it has been reported that in the same

place at 8:30 on the evening of Saturday, October 22nd, he made a statement to the effect that it would be more to his advantage to vote for an acquittal than for a conviction"?

The question was objected to, the exception sustained, and an exception duly noted.

Thereupon the witness was cross-examined by Mr. Douglas, as follows:

I went to see Kidwell and Akers for the purpose of getting a story for my paper. In having what talk I had with him, I had it in the capacity of a writer for the Herald paper. I did not tell Kidwell I represented the Herald. I went there only in my capacity as a newspaper man. I was not interested in any of the parties of the action. I was hunting for a news story. I did not know any of the parties to the action. I was not there to try to find out anything for Sinclair or for Day, or for Burns, or for any of these other parties. I really undertook to do no
627 talking, but I wanted to hear Kidwell talk.

Thereupon the following occurred:

Q. Was that the way in which it was put by Mr. Flynn to Mr. Lambert, that you wanted to know whether or not you could listen to a juror talk?

The question was objected to, the objection sustained, and an exception duly noted.

Q. At any rate, you had this talk with Mr. Kidwell, believing that Mr. Lambert had advised Mr. Flynn that you could properly do so, is that right? A. That was my understanding.

Q. Did you tell Mr. Flynn or Mr. Lambert, that you intended to induce, if you could, Mr. Kidwell to take a drink with you.

The question was objected to as hearsay, the objection sustained and an exception duly noted.

Q. I believe you testified, on cross-examination by Mr. Hoover, that you treated Mr. Kidwell to a drink twice; is that right? A. I asked Mr. Kidwell to have a drink. He could have chosen coca-cola if he had wanted to. That was his option what he drank. I forced nothing on him.

Q. You thought it was proper and right for you to talk to this juror when this case was pending?

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon the witness continued:

I said to Kidwell that Fall was an old man and a sick man in connection with a discussion of the Doheny case. I knew that Fall was actually on trial at the time I made that remark. I made it to see what Kidwell's reaction
628 would be. I was not trying to find out what he thought of the case. I had heard that he had made certain statements and I was trying to find out what his motive for making them might be. I wanted to find out everything that he would tell me. I wanted as definite information as possible. I first told Flynn about the $150,000 or $200,000 of Sinclair's money. Then I told it to Burkinshaw, and other members of Government Counsel. That was the only statement I recall that was made in the presence of Kidwell. There was no particular amount of money named at any time except that. Akers made that remark to Kidwell. Kidwell replied in substance that that was no amount of money for Sinclair to pay, that Sinclair had plenty of money.

Thereupon the following occurred:

Q. Did you regard that statement, at that time, to be an important one, as a part of the conversation?

The question was objected to as calling for a new opinion of a then conclusion, the objection was sustained, and an exception duly noted, and the witness continued:

I told it to Flynn about 5:30 on Saturday, October 29th, and I told it to Burkinshaw about 8 or 9 o'clock that evening. I also told it to Lambert in between those two instances, about 7 o'clock. I told Lambert the result of my conversation with Kidwell, or the result of the incident there. He made some comment on it. I told it then to Flynn, Burkinshaw and Lambert before this affidavit was made about which Mr. Hoover asked me. The affidavit was drawn Monday morning. It was not dictated. It was taken

from testimony which I gave in the grand jury room, by two Assistant District Attorneys, whose names I do not know. I assume that they prepared it. I did not see
629 it prepared. I do not know who drew it.

Thereupon the following occurred:

Q. Do you remember stating, in your testimony before the grand jury, this part of the conversation about the $150,000 or $200,000?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you go into Mr. Burkinshaw's office for the purpose of having this affidavit made and written up? A. No, sir. I went in there to wait while it was prepared somewhere else.

Q. And it was then submitted to you after it was prepared? A. Yes.

Q. Did you call Mr. Burkinshaw's attention, or did you call Major Gordon's attention or the attention of anybody else in the District Attorney's office, to the fact that that item of $150,000 or $200,000 was left out of the affidavit?

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon the witness was examined by the Court as follows:

I have rather a characteristic walk. One leg is shorter. An automobile accident. The testimony before the grand jury from which the affidavit was drawn was given in the morning. The affidavit apparently was drawn early in the afternoon because I signed it about 3 or 4 o'clock. I appeared before the grand jury on Monday morning, October 31st at about 10 o'clock. It was between 3:30 and 4 in the afternoon that the affidavit was presented to me, and I signed it and swore to it.

630 Thereupon **William J. McMullin** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am 30 years old. In the latter part of September or the fore part of October, 1927, I made application for em-

ployment with the Burns Detective Agency, Philadelphia office. I filed a regular form application in the name of William V. Long. I had made application for employment with the Burns Agency about 2 or 2½ years prior to that. I used my own name, William J. McMullin. I filed a photograph of myself both times. I handed my application of this year to C. G. Ruddy in Philadelphia. He is here in court. I obtained employment on this last occasion about October 13. In the course of my employment I was later directed to come to Washington, by Assistant Manager Welchans, the evening of October 18th. He is here in court. (Welchans stood up and was identified by the witness). I left that evening and arrived here the next morning, the 19th. Welchans instructed me to bring my car, and meet Ruddy at the Union Station. Ruddy instructed me to shadow Glasscock, No. 4, one of the jurors in the Fall Sinclair case then on trial (Glasscock stood up and was identified by the witness). My symbol was L-36. I was engaged in Washington by the Burns Agency on that occasion from the 19th to the 29th. I have never been fired by them. I was paid by them up till about November 10. I am now under subpœna on behalf of the Government in this case. I was first put upon subpœna in this case about December 1 and have been under subpœna ever since.

Thereupon the witness was handed Government's Exhibit 286, which he identified as his handwritten report for October 19.

631 Thereupon the witness continued:

Paragraph 4 of that report is as follows: "At 8:25 p. m. subject came out and entered a small car either Chevrolet or Overland Coach District of Columbia Registration P 993. Another man was with subject about 30 years of age, 5 ft. 8 in. weighing about 150 pounds. Both entered machine and drove to the Post Office Building at 11th and Pennsylvania Avenue where they parked the car and entered remaining about ½ hour, when subject and two men came out and one man left and walked over and up Pennsylvania Avenue." That is false. It was not put in that report at my own instance. It was put in at the instance of some one else.

Thereupon the following occurred:

Q. Who?

Mr. Hoover: We object.
Mr. Ruddy:

The question was objected to on the grounds it cannot operate against the respondents unless some one of them directed the false statement to be inserted, or unless some person authorized by one of the respondents to do so directed the false statement to be inserted, and a motion made to strike out the answer, the objection and motion were overruled, and an exception duly noted to each ruling.

Q. I believe you stated you were directed to do that by Mr. Ruddy? Which Mr. Ruddy? A. Mr. Charles G. Ruddy.

Mr. Hoover: If your Honor pleases, might it be understood that our objection will apply to all of this line of examination, without the necessity of repeating the objection to each particular question.

The Court: As to this particular matter?

632 Mr. Hoover: Yes, sir.

The Court: I think so.

Mr. Hoover: Without the necessity of objecting to each particular question.

The Court: You may do so with respect to this particular point.

Mr. Hoover: And an exception noted.

(Ruddy stood up and was identified by the witness as the man he referred to.)

The Witness continued:

That direction was given me at Room 113, Harrington Hotel, where I was stopping, the morning of October 19th about 11 o'clock.

Thereupon the following occurred:

Q. Will you state what Ruddy said on that occasion.

The question was objected to on the ground there was no possible connection with the respondents, the objection

overruled and an exception duly noted, and the witness continued:

Ruddy told me that this was a nice job here on this case, and that I was to keep my nose clean, and not to take any instructions from any of the other men, talk to them, but to take orders from him alone. He gave me this number P-993, which he took off a list of about 12 other numbers that he had. He told me to put this man in the city post office with the subject, Juror Glasscock. I put him in the post office building. Ruddy never said any more about it. He gave me the description here of the man, and a license number. He said to put him there some time during the evening. I have never seen that car with that license number. I did not go to the post office that evening to see whether the subject was there or not. I made that report up around
1 or 1:30 the following morning and gave it to Ruddy
633 at my room in the Harrington.

Thereupon the witness was handed Government's Exhibit 220, which he identified as his handwritten report for October 20.

Thereupon the witness continued:

Paragraph 2 of that report is as follows: "He came out at 12:30 p. m. by himself smoking cigar and proceeded to Curry's store, corner of 3rd and D Sts., N. W., where he entered and remained about 15 minutes. When he came out I observed that he was reading a newspaper as they are sold at this store and probably purchased the paper there. He walked to opposite corner of 3rd and D Streets, N. W., and continued to read said paper then proceeded back up D Street towards Court House reading paper walking very slowly. At 4th Street he stopped reading and dropped the paper against a house next to corner and walked very slowly over Court House Grounds smoking cigar and entered said Court House." That statement is false.

Thereupon the following occurred:

Q. I will ask you whether or not that statement was put in that report at your own instance or at the instance of somebody else?

The same objection was made to this question, the objection overruled, and an exception duly noted, and the witness continued:

It was put in at the instance of Mr. Ruddy. I received that direction the morning before, the 19th, when Ruddy told me about the license number. He told me that the jury had been charged by the judge not to talk about the case or read newspapers, and he says "The first opportunity you get, put this man reading a newspaper." He told me to try to put it in my report of that day, the 19th, or the 20th, and I put it in the 20th, the next day. I did not see Glasscock at 12:30 that day, smoking a cigarette at
634 Curry's store. I did not see him reading a newspaper that day. I gave that report to Ruddy that evening at the Harrington Hotel.

Thereupon the witness was handed Government's Exhibit 250, which he identified as his handwritten report for October 22, which he gave to Ruddy at the Wardman Park Hotel that night.

Thereupon the witness continued:

Paragraph 2 of that report is as follows: "He came out at 12 noon and drove his car to his home and I noticed a Chevrolet Coupe with District of Columbia Registration V 202 following subject's car to his home. Subject came out at 12:30 and drove back to his place of employment and at 1:15 I noticed said Chevrolet Coupe in the vicinity of 13th and D Streets. At 3:20 p. m. subject came out of his place of employment and drove to his home and I observed an Oakland roadster with District of Columbia Registration P 1738 following the subject's car. At 3:40 p. m. subject and his wife and children entered the car and drove to the Potomac Flying Field and I followed. When subject's car arrived there I noticed that the Oakland roadster, District of Columbia Registration P 1738 was there ahead of subject's car and I observed a man about 5 feet, 9 inches in height, slender built 150 pounds ruddy complexion shabby blue suit, old brown shoes, dark brown balmacan coat and same colored cap on, the coat and cap of a shabby appearance. This was the man I saw driving the Oakland that followed subject home and here he was again at flying

field ahead of subject when latter arrived. The subject and this man were in conversation for about 20 minutes and then said man entered the Oakland roadster and drove away. Subject remained until about 5:10 p. m. when it began getting dark and then drove to his home. I took par-
635 ticular notice as to if any car was following the subject's car and did not see any." That statement is false. It was not put in there at my own instance. It was put in at the direction of someone else.

Thereupon the following occurred:

Mr. Hoover: If your Honor please——

Q. (Interposing): At whose suggestion? A. Mr. Ruddy.

Mr. Hoover (continuing): —we made an objection to the examination as to this report, on the same ground that we objected yesterday as to the other reports. And we would like to have it noted, also, that the objection will to all this line of examination, without repeating the objection to each question, and exception noted.

The Court: Yes; I think that course should be pursued.

Mr. Beech: For all the respondents?

The Court: Yes; for all the respondents, assuming they are all the same.

Thereupon the witness continued:

It was made at Ruddy's suggestion at Room 113 Harrington Hotel, on the morning of October 22, about 10 or 11 o'clock. Ruddy and I were present. I called Ruddy on the telephone at Wardman Park and told him that the subject was down at his place of employment. He told me that he wanted to see me in about 20 minutes, at the Harrington Hotel. I left the vicinity of 13th and C and went over to the hotel and waited there a while, and Ruddy came and told me that something had gone wrong in the case the day before, and it looked very bad for Sinclair. He had a list of numbers. He told me to mark down two numbers, U 262 and P 1738, and the description of a man. He told me those numbers were automobile license numbers. He told me to put the man driving license No. P 1738 in conversa-
636 tion with the subject at his home. He reconsidered the matter and told me to put him in conversation with the juror at Potomac Park. He told me to put the

other car, U-202, the Chevrolet Coupe, following subject's car home at noon. As to the P-1738, I told him I didn't know much about the Park. He said he didn't know much about it either. He went out of the room and said he was going to make a telephone call, and he came back in 5 minutes. He told me to put the subject, the driver of the Oakland roadster, P-1738, in conversation with the juror at the Potomac Flying Field. When he came in the room at that time he had a bunch of papers in his hand. He said this stuff would be used for a mistrial, but in all probability we would not have to use it, as it would not be needed. He gave a reason.

Thereupon the following occurred:

Q. Go ahead and tell what he said.

The question was objected to on the grounds that it was hearsay, not shown to have been authorized by any of the respondents, and therefore irrelevant; the objection was overruled and an exception duly noted, and the witness continued:

He said that Sinclair was going to spend plenty of money to get out of this as he had to, and that he also felt sure that no Department of Justice agents were trailing these men, or shadowing the jury; and that we had to show the client something. He told me to make a memorandum of that, and I did. He gave me a description of the man I should put in the car that bore the license P-1738, and a description of the car. I made that memorandum while he was talking to me. I put it in my pocket and he proceeded to go out of the room, and he told me not to carry it, in case I got picked up, to put it in my room. I put it under a paper in the writing desk at that time. He also read off the paper that had the description of the
637 juror's history on. He told me that Glasscock was a man that talked too much and was a man they were afraid to trust. He told me that he was going to keep me on Glasscock because he didn't move very much, and he knew where he could get in touch with me any time he wanted me. I think I wrote my report of that day about 11:30 p. m. before I went to the Mayflower, after I talked with Ruddy. I think I took him out around 18th and Co-

lumbia Road that evening. I rewrote the report that night when I got back to the Harrington, at 11:30. I think I destroyed the memorandum that I wrote that morning at the Harrington in Ruddy's presence. I am not sure. I do not know where it is now. I did not go to the Potomac Flying Field that day, nor did I see an Oakland Roadster, license No. P-1738, nor did I see a car with license No. U-202 following Glasscock that day. I have seen the Oakland Roadster, P-1738, on December 3rd, on the west side of the court house. I went up stairs to the District Attorney's office and saw Mr. H. R. Lamb. That is not the first time I had seen him. I saw him here during the grand jury investigation on November 8. I went to the Mayflower the night of October 22 after midnight. I drove Stewart up there from the Harrington. I saw ex-governor Gifford Pinchot at his home in Washington on Monday, October 24. I had a conversation with him relative to the operations of the Burns detectives in Washington in connection with the Fall-Sinclair case. This was about 2 o'clock. In consequence of that conversation I met Governor Pinchot's secretary at the Transportation Building, Room 422, in Owen J. Roberts' office about 4 o'clock. I had a conversation with Mr. Roberts on the same subject, the activities of the Burns operatives in the Fall-Sinclair case. Senator Pomerene was present. On the 26th I saw Ruddy in my room at the Harrington about 12:30. Ruddy, O'Reilly, Stewart and I were present. Ruddy came
638 in and said the government had $100,000 to spend on the jury and Sinclair was going to spend $200,000 on the jury. He gave Stewart instructions to return to Philadelphia, as he would not be needed. He told me to stay. As he went out of the room, he winked and said, "I will see you later in the day." Stewart said nothing on that occasion in the presence of Ruddy. He went out of the room also, and came back to the room afterwards. He made a remark after he was told that he was to go home. I saw Ruddy later.

Thereupon the witness was handed a paper marked Government's Exhibit for Identification 351 which he identified as being his signature, William V. Long, and which was sworn to by him on November 3, 1927 before Notary Public Lawrence G. Moore.

Thereupon the witness continued:

I had a conversation with Ruddy the day before the making of the affidavit and the evening before, about 2 hours before it was made. That first conversation was November 2nd in the hallway of the grand jury room. It was not a conversation relative to the affidavit. It was why I was here in Washington. It was about 3:00 o'clock.

Thereupon the following occurred:

Q. Now, what was said on that occasion?

Mr. Hoover: We object, if your Honor please. It is apparent so far as the testimony of the witness has now gone that this conversation occurred at 3:00 o'clock in the afternoon of November 2nd. Your Honor will take judicial notice of the fact that on November 2nd before 11 o'clock, your Honor had discharged the jury from the further consideration of the case. Any conversation that occurred between Mr. Ruddy and this witness, we submit, is not evidence against any of the respondents. And if Mr. Ruddy was engaged in the capicity of manager of the ac-
639 tivities of the Burns Agency for the purpose of shadowing the jurors during the trial of that case, then his services and his authorization to act as such had come to an end. We object to the testimony on the ground that therefore this is merely hearsaw and cannot be evidence against any of the respondents.

Mr. Douglas: If your Honor please, on behalf of the Burns defendants we object to it, first upon the ground that there is no proof and no promise of any proof that Mr. Ruddy acted in this manner upon the authority, expressed or implied, of the defendants William J. Burns, W. Sherman Burns or Charles S. Vietsch. I object to it upon the further ground that if there was any agency, it ended before this date, and if there had been any agency it was no longer in existence; and upon the further ground that there was nothing pending in the Court, the case was not pending at that time and no attempt could be imputed to these defendants concerning that affidavit.

The Court: I think it is within the scope of the pleadings at least so far as the respondents W. J. Burns and Sherman Burns are concerned. I am not so clear, and I do not

wish to be now understood in ruling that you may take the answer to the question, as to the other respondents. I do it with reference to the respondents W. J. Burns and W. Sherman Burns, not being satisfied at this time that it is admissible in evidence against the other respondents.

Mr. Douglas: I would like to inquire, if the District Attorney could see his way clear to answer it, whether or not he means by his statement to say that he intended to prove that W. J. Burns and Sherman Burns were here and caused this affidavit to be made by this man?

Mr. Gordon: No they were not here at that time.

640 Mr. Douglas: I desire to reserve an exception to your Honor's ruling.

Thereupon the witness continued:

Ruddy told me to get out of the court house before they could serve a subpœna on me. I went out and waited across the street and Robbins told me to take the train back to Philadelphia and come down the next morning, that they were bringing my report from New York, of the October 22nd incident. That is all that I recall that Ruddy said on that occasion. I took the 4:30 train out of Washington and went back to Philadelphia.

Thereupon the following occurred:

Mr. Hoover: If the Court please, may the record show that all of this line of testimony is being admitted only as against the respondents W. J. Burns and Sherman Burns.

The Court: That is the effect of my ruling. I am not satisfied that it is admissible against the other respondents at this time at all.

Thereupon the witness continued:

I returned to Washington the next morning, arriving here about 1:00 o'clock, in company with Welchans and operative O'Brien, from Philadelphia. Welchans and I went to Judge Wright's office. We waited for Mr. Wright to come from court about 4:00 o'clock. Welchans had charged me to keep Judge Wright from knowing the falsity of this statement. We went into Judge Wright's office to talk the matter over and I made a slip about the color of the car, and Judge Wright decided, after calling Ruddy

up, that I would make the report that evening at Wardman Park. I saw Ruddy that evening at Wardman Park in his room. I saw Judge Wright again. I had a conversation with him relative to this matter. Ruddy told me he wanted me to make this affidavit and there would
641 not be anything more to the case. He charged me not to let Judge Wright know the truthfulness of this statement. He also told me it would be pretty bad for me if I did not go through with it. He said it was under the instructions of W. J. Burns.

Thereupon a motion was made to strike out the last sentence, the motion was overruled and an exception noted, and the witness continued:

He said that W. J. Burns had given him instructions that he wanted this affidavit made for the client. He said it would be over after this affidavit was presented. It would call the government's bluff and the case would be all over. He said he had reference to the grand jury proceeding that was going on that day. Then I saw Judge Wright later that even at Wardman Park. It was then that this affidavit was made, prepared and signed and sworn to by me. The affidavit was prepared by Judge Daniel Thew Wright, who sits here representing the respondent Day. I think he wrote it in longhand with a lead pencil, and a man from New York named Schumacher transcribed it on the typewriter. That was in Ruddy's apartment in Wardman Park.

Thereupon the government offered the following affidavit of William V. Long, dated November 3, 1927, which was objected to on the same ground as heretofore stated, the objection was overruled and the affidavit received as against the respondents W. J. Burns and W. Sherman Burns, and an exception duly noted.

"GOVERNMENT'S EXHIBIT No. 352."

"Mr. Gordon: Reading Government Exhibit No. 352:

"Wm. V. Long, being duly sworn, says that he is an investigator in the employ of the Philadelphia Office of The William J. Burns International Detective Agency Inc., and resides at 1504 Kinsdale, Oak Lane, Philadelphia, Pa.

On October 22nd, 1927, and for some days prior thereto he was in the City of Washington, D. C., under instructions of his superior, C. G. Ruddy, manager of the Philadelphia Branch of said Agency.

642 On Saturday October 22nd, 1927, at about 12:30 P. M. Norman Glasscock, who resides at 1013 8th Street, N. W., Washington, D. C., and who was one of the Jurors impaneled in the cause of the United States v. Fall et al., which was then on trial in the Supreme Court of the District of Columbia, came out from the establishment of Somerville National Brass Works, located near 13th and D Streets, N. W., Washington, D. C., entered an automobile, and drove away. Affiant in an automobile followed him. Said Glasscock, turned into Pennsylvania Avenue driving East: At about 10th Street on Pennsylvania Avenue, affiant observed an Oakland Roadster, between affiants car and the car of said Glasscock: When Glasscock's car turns northwardly from Pennsylvania Ave, said Oakland Roadster followed. Affiant while on Pennsylvania Avenue, observed that the license tag on said Oakland Roadster, was numbered P-1738. The Roadster was painted with two tone colors, which distinguished it. Mr. Glasscock, drove to his home at 1013 8th Street, N. W., with said Oakland Roadster following him all the way, and parked his car near his house, the Oakland continuing on and disappearing from affiant's view, the affiant remaining to observe the further movements of said Glasscock.

At the expiration of from 20 to 30 minutes, Mr. Glasscock, accompanied by a lady and children, emerged from his house, entered his automobile and drove to the Potomac Flying Field in Virginia, affiant followed in his automobile. Upon arrival at the Potomac Flying Field, affiant observed about five automobiles to be already arrived, and recognized one of them to be the Oakland Roadster, painted in two tone colors and bearing the license tag numbered P-1738, the same automobile above mentioned.

Affiant alighted from his car, went to the Oakland car, and verified the number of the license tag which it bore, as P-1738. Turning from said Oakland car, affiant saw Mr. Glasscock, and a gentleman in conversation together with no other persons within hearing. They remained so in conversation, for a period of time which affiant estimates to

be from 15 to 20 minutes, whereupon the gentleman who had been so in conversation with Mr. Glasscock, entered said Oakland Roadster bearing license tag numbered P-1738, and drove away. Mr. Glasscock entered his own car, and drove to his home, 1013 8th Street, N. W., whither affiant followed and saw him enter his house.

(Signed.) WM. V. LONG.

Subscribed and sworn to before me this 3rd day of November, 1927.

LAURENCE G. MOORE,
Notary Public."

Thereupon the witness continued:

After signing and swearing to that affidavit, I didn't give it to anybody. They kept it there. Ruddy told me
643 in company with O'Brien to get out of Washington right away and we left that morning about 1 o'clock and proceeded back to Philadelphia. That was the morning of November 4th. O'Reilly was there at Ruddy's room the night of the 3rd. I returned to Washington on the morning of November 8, Tuesday. Ruddy came down on the train with me from Philadelphia. We were met at the Union Station by Sherman Burns, W. J. Burns and Robbins at 10:30 a. m. That is the first time I had even met either William J. Burns or W. Sherman Burns. I was introduced by Ruddy to the both Burns. W. J. Burns said he was glad to meet me, was glad to know that I was going to go before the grand jury and stick to my story and affidavit as Ruddy had told him so. He said he had given a story out to the newspaper the day before, told the Government where it got off at, using the terms that he called them crooked. He said that the Government was up against a wall and was throwing them on the defensive—just what he wanted. And that this runt, Burkinshaw, was running around in circles. Then we got in a taxicab and went to the office of Mr. Thomas Lodge, in the Columbia Building. In the taxi W. J. Burns said he was going to give a further story out to the newspapers, follow this right up. (Mr. Lodge stood up in the court room and was identified by the witness as the man to whose office he went.) Going

up on the elevator Ruddy told me in the present of W. J. and Sherman Burns to let them do the talking up in Lodge's office. I was introduced to Mr. Lodge; W. J. Burns, I think, told Lodge that I was going over to the grand jury. I wasn't due until the next day, but they brought me down ahead of time. And they told me to wait outside in the next room. I had received a subpœna on November 4th, calling for my attendance here on November 9th, the following day. I received that in the office of the Burns
644 Agency in Philadelphia. I think they were in conversation with Lodge in his office for about 15 or 20 minutes. After this conference they came out. W. J. Burns told me to go over to the grand jury and stick to my story and affidavit and I would be well taken care of. I told him they would probably want me to identify this man, and how could I do it? I didn't know him. He said, "That is all right. Nothing in your report indicating that it is Mr. Lamb except the description." I told him, "All right." Ruddy and Sherman Burns were present when that was said. I went directly from there to the grand jury room with Ruddy, and that morning I appeared before the grand jury. Immediately after I came out of there I saw Ruddy. He asked Burkinshaw if I could be excused from the attendance of grand jury, as I was on a job in Philadelphia. I told Burkinshaw that I was not on any job, but he excused me anyhow. Ruddy and I went back to the Columbia Building. I saw W. J. and Sherman Burns in the hallway. I did not have any conversation with either of them. They went in Lodge's office for 10 or 15 minutes. When they came out W. J. Burns shook hands with me and told me he was proud of me. He said, "It is all right if you can't identify the man. I know I can put dependence on you." He assured me again that I would be well taken care of. Ruddy and I went and had lunch. Then I went to the court house and went before the grand jury the second time and was given my release slip. Then Ruddy and I went to the Willard Hotel. W. J. Burns had checked out. We went to the Union Station, arriving there about 4:05. I saw W. J. and Sherman Burns there. W. J. Burns assured me again that I would be well taken care of. He told me to return to Philadelphia and get my car and come

back to Washington, go in company with Ruddy to the Flying Field, look the lay of the land over, also to
645 get a look at Lamb's automobile. We got on the train. He also told me that he was personally acquainted with the foreman of the grand jury, who was also the Secretary of the Chamber of Commerce, and that this was not the only tight place that he ever had been in, and if it came to a show-down he could depend on this man. I returned to Washington with my car the next day, the 9th. I have never been to the Flying Field in my life. I did try to locate the Lamb car. The evening of November 9th Robbins called up the hotel, and in company with Stewart we went up to Lamb's home to get a good look at his car. We couldn't find it. We were there several times that evening. Robbins and Stewart carried me to show me where the place was. We gave it up that night. The next morning in company with Stewart we went up around his residence trying to get a look at the car. Didn't see it. Also several times that day and the early part of the evening. The first time I saw it was December 3rd at the west side of the court house. I remember a conversation with Ruddy in his room at Wardman Park around noon on October 29th. He told me to go to Philadelphia, that something was going to break in the case over the week end. I went to Philadelphia that afternoon, after writing my report out and dating it, filling it up till 6:00 p. m. I had two conversations in Ruddy's office in Philadelphia before I came down here to report before the grand jury. One was Sunday night, November 6th. The other was the evening of November 7th.

Thereupon the following occurred:

Q. Now I want to know what was the subject of that conversation of November the 6th? A. I received a telephone call from the office to be in at 7 o'clock, Mr. Ruddy was coming up from Washington.

Mr. Douglas: Just one moment. I assume this
646 conversation is subject to the general objection, if Your Honor please, that we have been making to the conversations between this witness and Ruddy?

The Court: I think so, Mr. Douglas.

Mr. Douglas: Yes, and the same exception.

Thereupon the witness continued:

Ruddy came in the office about 7:30. He called me in to his private office and asked me if I had received a subpœna. I told him yes, the day before. He said, "I want you to go down to Washington Wednesday, and if they ask you what your instructions were tell them that you were sent here to place a certain juror under surveillance," some words to that effect, about keeping at a distance and not to talk to any of them. Knowles, Sullivan and Stewart were also there receiving instructions. He said he had just left W. J. Burns and he was going to Washington to tell them where they got off at the next day. He told me that W. J. Burns was going to place a lot of confidence in me, and he assured him that it would be all right, and he was going down to Washington to call the Government's bluff. I made my application for employment to the Burns Agency the latter part of September or the first of October in the name of William V. Long. I used that name because I had previously made application about 2 or 2½ years before that under my own name, submitted my own photograph. Previous to that time I had worked for Stahl's Detective Agency in Philadelphia. I had given him as a reference. I had also been in a little trouble about 9 years ago and thought that probably they knew about that. About 1920 I forged a check for I think $90.00, and pleaded guilty and was sentenced to from 1 to 7 years in the penitentiary. I served part of that sentence and was put on probation after serving another part of it. I actu-
647 ally served about 2 months in the penitentiary. The rest of the time I was about 60 miles from there, a clerk at a brick yard at Junction City, Ohio. I was not released until after serving for a year. During the recess of October 19th, I did not see Glasscock. He went home.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

I was convicted of forgery in Cleveland, Ohio, in March, 1920. I was guilty, and pleaded guilty. I do not think I forged two checks instead of one, and convicted and pleaded guilty to forging both of them. I think it was only one. Frederick McMullin was the name I used. I do not know

whether there is such a man as Frederick McMullin. I think the amount of the check was $90. I did not remain in the penitentiary for a period of a year and three months from March, 1920, until the latter part of April, 1921. I remained about two months. I was out on parole the balance of the time at Junction City, about 60 miles away. I think I was sentenced to from 1 to 7 years. It might have been 1 to 20. They both called for the same sentence. I made the particular application under which I was employed here in 1927 under the name of Long. (The witness was handed an application which he identified as being in his handwriting.) (William V. Long stepped forward in court.) I know the gentleman standing there. His name is William V. Long. I have known him for about a year.

Thereupon the following occurred:

Q. Did you have Mr. Long's consent to use his name in this application?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I had in mind to use his name when I used the name of William V. Long.

Q. Did you tell Mr. William V. Long, the man who
648 stood up here, that you were going to use his name, or did you tell him afterwards that you had used it?

The question was objected to as collateral, the objection sustained, and an exception duly noted; and the witness continued:

I remember Mr. Ruddy. I saw him when I applied for this place in 1927 under the name of Long. I showed him nothing at all, no papers or credentials. I did not tell him that I had been in the Marine Corps. I never have been. The answers to the questions put in that application were made by me and are in my handwriting.

Q. In making your answers to these questions in the name of William V. Long, did you undertake, in giving your answers, to make such answers as would comport with or fit William V. Long or yourself?

The question was objected to on the ground that the application was irrelevant, the objection sustained on the ground the question was argumentative, and an exception duly noted; and the witness continued:

Under the question of residence, the residence given as 1504 Kingsdale, Oakland Street, Philadelphia, was my residence at that time. I was born April 9, 1897. At the time of my application under the name of William V. Long for this position with the Burns Agency, I was 30.

Thereupon the following occurred:

Q. Can you tell us where you lived during the preceding 10 years, from the time you were 20 years old until the time you were 30?

The question was objected to as beyond the scope of the direct examination, and as irrelevant and immaterial, the objection sustained, and an exception duly noted.

Q. How many different places have you lived, let us say, in the 10 years preceding 1927?

649 The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I did not work for the New Jersey State Police for a period of 6 years. I do not recall whether I ever said to the Burns Agency that I had. I would like to refresh my memory. (Witness was handed a paper.) I did make the statement to the Burns people, when I applied for this job in 1927, that I had been with the New Jersey State Police for 6 years. That statement was false. I do not remember making the statement on the same occasion to the Burns Agency that I was with the New Jersey State Police from January, 1921, to January, 1927, and that I had resigned from that place. I was given an application to fill out. (Witness refreshed his memory from the record on the back of the memorandum given him.) I stated to the Burns Agency that I was with the New Jersey State Police from January, 1921, to January, 1927. That statement was wholly true under the name I used. I was then giving the record of William V. Long. I was a member of the New Jersey State Police.

Thereupon the following occurred:

Q. How long were you on the New Jersey State Police, from what date to what date?

The question was objected to as irrelevant, the objection sustained, and an exception duly noted.

Q. Do you know how long William V. Long was on the New Jersey State Police?

The question was objected to, the objection sustained and an exception duly noted; and the witness continued:

I worked for Mr. Stahl and he had known that I had been in this trouble before, and I thought when I applied to Burns for the position and gave him as a reference about 2 years ago, that he had told them. I did not
650 have any trouble with Mr. Stahl. (Stahl stood up in the court room and was identified by the witness.) I was not discharged by Mr. Stahl of the Stahl Agency on the ground stated by him to me that I had falsified 3 or 4 different operative's reports.

Thereupon the following occurred:

Q. Did he charge you while you were in the employment of the Stahl Agency that you had falsified reports?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Had you been up to 1927, up to the date you filed this application with the Burns Agency in the name of William V. Long, ever been complained of or indicted or convicted of any violation of the law?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Were you not asked that question I have just read to you in your application for this position in 1927?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I stated to the Burns Agency in 1927 in my application that I had not been complained of or indicted or convicted of any offense. That was true according to the name I used.

As far as I know Long has never been indicted. I gave the names of some people as references. I gave the name of Senator Edge of New Jersey. I have never met him in my life. I gave the name of Mr. Till. (Till stood up in the court room and was identified by the witness as the man whose name he furnished.) I know Mr. Long personally very well. I gave the name of Captain Lamb of the State Police of New Jersey. I made an application on July 28, 1925 to the Burns Agency. I do not re-
651 call who was the manager in charge then. It was not Ruddy.

Thereupon the following occurred:

Q. You undertook, did you not, to give correct statements of facts with reference to your application at the time you made it?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

(The witness was handed his 1925 application to the Burns Agency.) There is no signature to it. I see my name at the top of it, but this does not strike me as being my application. This is not my application. It resembles my handwriting, but it is not the form that I remember filling out. I am positive that it is not the application that I originally filed with the Burns Agency. I do not think the blanks of the paper and the endorsements on the back thereof are in my handwriting.

Thereupon the application dated July 28, 1925 was marked by the Clerk, "Respondents' Exhibit No. 12 for Identification," and the same is attached hereto.

Thereupon the application dated September 30, 1927 was marked by the Clerk, "Respondents' Exhibit No. 13 for Identification," and the same is attached hereto.

Thereupon the witness continued:

I do not know whether the finger prints on the application dated July 28, 1925 are mine. I do not remember putting my finger prints on that paper at the time I handed it to the Superintendent of the Burns Agency at Philadelphia. I was never employed by the Pennsylvania State Police. I do not remember ever saying to the Burns Agency or

putting in writing when I applied for a position in July, 1925, that I had been in the employ of the Pennsylvania State Police for two years.

652 Thereupon the following occurred:

Q. Were you employed on the Pennsylvania State Police at any time prior to January 1, 1925?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I made an application in 1925 to the Burns Agency for a position. It was in writing. I do not know where it is. I have never seen it since. I served two months in the penitentiary at Columbus, Ohio, and was transferred about 60 miles away to Junction City, where I remained the balance of the year, about 8 or 10 months. I stayed there as a prisoner. I was on parole. I was clerk down there. I was working there at Junction City under the penitentiary authorities instead of in the penitentiary at Columbus. At the end of this 8 months I took the option of going out of the State, so I took another 6 months' parole and being out of the city, seeing as my home is in Columbus, I was in the United States Army.

Thereupon the following occurred:

Q. Can you state when you first enlisted in the Army?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did your service in the army take you to Kelly Field in Texas, near San Antonio?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I did not, on July 30, 1919, while a private in 144th Aero Squadron desert the Army of the United States. I was discharged from the Army, but I was not dishonorably discharged. It was a plain discharge. I never saw my army record in the War Department.

Thereupon the following occurred:

653 Q. Did you see the communication from the Secretary of War to Mr. Gordon, United States District Attorney, under date of November 25, 1927, in which he gave the facts concerning your war record?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Would you like to refresh your memory from your Army record in the War Department before giving your final answer that you did not desert from the United States Army and that you were dishonorably discharged on account thereof?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Isn't it a fact, Mr. McMullin, that in 1919 or 1920 you were imprisoned in the military hospital at Fort Sam Houston, and that you broke your way out and escaped from the Army at Fort Sam Houston, and deserted in that way?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you escape from a military hospital of the United States either in Texas or anywhere else during any time between 1919 and 1925?

The question was objected to, the objection sustained, and an exception duly noted.

Q. How many times have you been married, Mr. McMullin? A. Married three times.

Q. Give us the name of your first wife and the date of that marriage?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

654 I don't recall the exact day of the first marriage. It was in 1917. I have no children. I was not married when I went to Texas in the Army in 1917. I was married in Texas after I got there. This lady lived in

Columbus, Ohio. I don't know whether she is still living. I was married to Violet Grace Newcomer in Texas on June 16, 1919. My first wife was still living, but divorced. I got two divorces. I have no record of that divorce, but the courts have. I got one divorce in Pennsylvania and one in Ohio. My first wife was divorced from me in Ohio shortly after we were married in 1917. I don't remember the month or day of the month of my marriage in 1917. It was along in November or December. It was at San Antonio, Texas. I married two women in San Antonio while I was there. I think I was married in the latter part of 1917 and divorced in the early part of 1918. My wife obtained the divorce around Columbus. I got notice of the divorce then.

Thereupon the following occurred:

Q. Isn't it a fact that when you married Violet Grace Newcomer on June 16, 1919, that your mother protested against you marrying this woman on the ground that you had a living wife undivorced then?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I was divorced from Violet Grace Newcomer in September, 1925. I remember making an application for a marriage license to be married to Rose Lindsey in 1925. I don't remember whether I swore to it. When I made that application I do not remember whether I made the statement that I had not been previously married. I don't remember whether I made the statement that I had not been divorced. I don't remember anything about it.

Thereupon the following occurred:

Q. Were you arrested and imprisoned at Fort Sam
655 Houston, by the military authorities, in the year 1919, upon the complaint of your wife, Violet Grace Newcomer, that you had committed the crime of bigamy?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I remember Mr. Lantz, from Philadelphia. His wife's name is Janet Brewster Lantz. I saw her before she arrived here under subpœna. I saw her Sunday, a week ago

(January 17, 1928). I was not arrested on four charges for violation of the traffic laws of Pennsylvania. I was summoned. I did not stand any trial. I was convicted. I did not pay any fine. I do not know whether somebody else paid my fine. In that connection I did not bribe a traffic officer named Varner, nor did I attempt to bribe him by offering to pay him $5.00 if he would not report me for those violations of the law. I did not prefer any charges against Highway Patrolman Varner. I reported him to Harrisburg and they asked me to make an affidavit to that effect, and they would investigate it, which I did, and my wife did too. Any charges that were charged against me were illegal, because I was shaken down for $5.00. I did pay him $5.00, because he wanted it, so he would not turn in. He shook me down for $13.50, and he finally came down and I gave him $5.00. I had no tail light and he stopped me. He knew I was from Philadelphia, by the name plate on the front of my car. He told me it would cost me $13.50 and he would fix it up for $5.00 for me, and I paid him the $5.00. After that I was not tried for those four alleged violations of law. I don't know whether I was convicted. I understand I was. I preferred no charges against Varner. I reported it to the Highway Department and they checked it up and made an affidavit and mailed it 12 miles away to a justice of the peace, and he put his seal
656 on it, for no tail light and reckless driving, and those charges were withdrawn and they put two other charges against me before the limitation of fourteen days was up. I never had any notification I was convicted. I understand I was convicted on those four charges preferred by Varner. I know W. R. Lantz. I have known him about a year. I do not, after this charge was preferred, and these counted charges made, go to W. R. Lantz of Milbourne, Pennsylvania, and request him to make for me a false affidavit, in substance to the effect that he was riding with me and Mrs. McMullin on the occasion of this tail light charge, and to cover in his affidavit that he heard Varner offer to drop the charges against me on the payment of $5.00.

Thereupon the following occurred:

Q. Mr. McMullin, was your name really McMullin, or did you change your name some time after you reached the age of 21?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

After this contempt case commenced, in the early part of January, I did not go over to where Mr. Lantz lived and ask her to persuade her husband not to testify in this case.

Q. Didn't you tell her on that occasion that if she and her husband did not testify against you that Mr. Lantz could get a good Government place, in the United States Service, for $125 or $200, or $250 a month?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I didn't visit or call to see Mrs. Lantz in Philadelphia in the early part of January. On or about January 8, 1928, while I was passing through the town of Shirleys-
657 burg, Pennsylvania, I saw Mrs. Lantz, who was then visiting her mother.

Thereupon the following occurred:

Q. Did you not on that occasion, Mr. McMullin, engage Mrs. Lantz in conversation and attempted to have Mrs. Lantz persuade her husband, William R. Lantz, not to testify against you, McMullin, in this pending contempt trial, and that you stated at that time that if he did so you would have him arrested by the United States Marshal; and also, that if he did not, the Government would give Mr. Lantz a good job?

The question was objected to, the objection sustained, and an exception duly noted.

Q. And did you not on the same occasion state to Mrs. Lantz that you could not promise anything definite, but that you thought it reasonably sure that you could get for Lantz a good job from the government?

The question was objected to, the objection sustained, and an exception duly noted.

Q. And also did you not state on the same occasion that at that very time that you were returning from Wyoming where you had been sent by the Government to inspect certain oil fields?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you not on the same occasion, in this talk with Mrs. Lantz, show her an auto tax on your car, the numerals of which, or the numbers of which were *preceded* by the letter "N" and you told Mrs. Lantz that the "N" meant Navy, and that you were driving the car under a Navy tag?

The question was objected to, the objection sustained, and an exception duly noted.

658 Q. I will ask you if this is not substantially true of and concerning your conduct: That in the month of March, 1927, that you witnessed an accident that resulted between two of the Philadelphia Rapid Transit cars in Philadelphia, and that you faked an injury to yourself and your wife and made a claim against the street railway company and obtained $75 therefor?

The question was objected to, the objection sustained, and an exception duly noted.

Q. I will ask you if this is true, Mr. McMullin: That in the early spring of 1927 you stated to Mr. Till—Mr. Lincoln Till, then an official of the London Guarantee & Accident Company, and which company was employing you, that you would, if they, the company, and Mr. Till desired it, would procure for the company false witnesses in accident cases in which the company was interested?

The question was objected to, the objection sustained, and an exception noted.

Q. I will ask you if you did not, in the month of June, while you were employed as an officer, a police officer or traffic officer at Millsourne, Pennsylvania, and while you were so employed, did you not employ a fellow officer to join you in going out in the country, on the streets, or in the streets at night time and hold up motorists, and by making false charges against them, collect and extort money from them for your own uses?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

The affidavit marked Government's Exhibit 352, and signed by me by the name of William V. Long is absolutely false, every bit of it. The signature of William V. Long was signed by me. I did not prepare this
659 affidavit, or dictate it. Judge Wright wrote the affidavit up in longhand. I was there. He asked me a few questions, and I stuck to the story. I was told to stick to it by Mr. Ruddy. Judge Wright had the report of the 22nd there to look at. He talked to me about what the facts were before he wrote the different paragraphs in this affidavit. I think he prepared the affidavit by preparing the paragraphs separately and then reading them over to me and asking me if they were right. It was prepared piece by piece from time to time. When it was finished he submitted it as drawn to me for me to read. I looked it over. I can't say I read it over so carefully, but I went through the form of reading it. I don't remember exactly what happened when I finished reading it. They brought a notary public in. I was in Robbins room and I was called into Ruddy's room. I think I was standing when I read the affidavit. I don't recall whether Judge Wright was there when I was standing up there. I think Thomas Lodge was there that evening, but I don't recall whether he was there at that time. When I read it I may have told Judge Wright that it was all right and correct. I do not recall exactly on the instant all that happened. Ruddy wanted me, as soon as that was over, to take Shoemaker down to the station and go on back to Philadelphia that night and not to stay in town.

Thereupon the following occurred:

Q. Do you remember that Mr. Lodge, after you said it was all right and correct, that Mr. Lodge then, before you signed it, asked leave to examine it himself?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Before you signed the affidavit, didn't Mr.
660 Lodge carefully go over it himself?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you engage in conversation with Mr. Lodge about the facts set forth in this affidavit before you signed it?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you have a conversation with Mr. Thomas Lodge, the lawyer, in Mr. Ruddy's room that night before this affiadavit was signed, with reference to the facts, or what were the truth of the facts of this matter?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I had a conversation with Mr. Lodge on the subject of the Potomac Flying Field, but I do not remember making any diagrams at all. I deny that I did. I do not know the Notary Public before whom I swore to this affidavit. I remember seeing him in Ruddy's room. I think he had a tuxedo suit on. I do not know whether he was Assistant Manager of the hotel. I do not recall whether he insisted upon my reading the affidavit again carefully before he would let me swear to it. I remember first going that afternoon to Judge Wright's office for the purpose of making this affidavit. As far as I can remember the Judge did not call his stenographer in the office. We were only in there about 5 minutes. I gave him certain facts, but I do not remember him dictating them to any stenographer at all. After Judge Wright and I had partly discussed the subject of the affidavit in his office, we adjourned to meet at Wardman Park, so that we might have the reports there. The report was on the way from New York. The first time I ever saw Glasscock was the evening of October 19. My report of October 19 starts out this way:

661 "Continuing on above case after arriving in Washington, D. C., I was met by Manager C. G. R. and ordered to the Hotel Harrington where I engaged a room and waited for instructions. I was given Juror No. 4 to shadow, Norman Glasscock, 1013 8th Street, N. W. I proceeded to the Capitol Building and joined in with the visitors on sightseeing and made enquiry as to where the case was being tried. I learnt that it was up at 5th and D Street, N. W., so proceeded there and court room was crowded and

could not get in. I then proceeded to vicinity of subject's home, 1013 8th Street, N. W. and took up watch and observed man enter house resembling subject at 5:30 p. m. Machines were parked on both sides of 8th Street above and below subject's house." That statement is true. The balance of the report is false, with the exception of the last sentence, which is: "I continued watch until 12 midnight, and not seeing anything further of subject I returned to hotel and discontinued for the day." I do not think he went out anywhere that evening. I stayed right there, to the best of my memory. So the whole time I was out of my room under this assignment was to go to the Capitol and back to the Court House here. Outside of that I do not recall that I did anything that day. I was up around Glasscock's home, which is 10 or 11 blocks from my hotel. I rendered an account that day for expenses, and I included 18 miles. (Exhibit 220, witness' report of October 20 was handed him.) All of that report of October 20th is not false. The first paragraph down to and including the words "back to the Court House and entered" is true. The next paragraph which commences "He came out at 12:20 p. m. by himself smoking cigar and proceeded to Curry's Store" and which ends "At 4th Street he stopped reading and dropped the pa[illegible] against a house next to corner and
662 walked very sl[illegible]ly over Court House grounds smoking cigar and entered said Court House" is false. The next paragraph commencing with "At 3.15 subject came out in company with other jurors" down to and including the words "and entered remaining until" is true. Then the next part "8:15 p. m. when he came out with two women and another man" down to and including "They all came out including subject at 11 p. m. and entered car and drove back to subject's home 1013 8th Street, N. W." is false. The last sentence "I returned to my hotel at 11:30 p. m. and discontinued for the day" is true. Ruddy gave me the first part that was false and told me what to do about the second part, about subject going through the Park to the Movies. He didn't write it out, or give me a paper with that material on it. I remained around the subject's home until 8 o'clock that evening, and called Ruddy at Wardman Park. He told me to get dinner and

then come out. I stayed around his hotel until 10:45 and then went back to the vicinity of Glasscock's home and saw his car still there. I asked Ruddy before I left: "What about the elapsed time?" He said, "Well, put him out for a little ride," and I didn't know where to put him, and I said, "Well, I'll put him for a short ride down through the Park and put him in a show," which I did. Ruddy came around the next morning and collected the report, looked at that part of it and it was all right. I was in Ruddy's room during the hours Glasscock was supposed to have been at the theater. I forget the number of his room. It was on the first floor. Robbins was there, but I do not think he was there when Ruddy told me to put this thing in this report. Ruddy and I were not confidential friends. When I went to Ruddy's room I walked up the steps. I don't remember whether I turned to the left or the right when I got to the top of the steps. I think his room was in the upper end, but I don't know. I don't recall which
663 wing it was. I think I turned to the left when I got to the top of the steps. Ruddy knew about the falsification of these reports. I think Robbins knew it. And the one report of the 22nd W. J. and Sherman Burns knew it. I won't say W. J. Burns knew it when I made the report. I never laid eyes on W. J. Burns or Sherman Burns until Tuesday morning, November 8th. They knew about this false report of October 22nd on November 8th. I won't say that Robbins knew the falsity of that report the day it was made.

Thereupon the following occurred:

Q. How do you know Robbins knew it?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

(Witness was handed Respondent's Exhibit for identification No. 12.) As I remember the application dated July 28, 1925, was not made out in duplicate when I applied for that position. I don't think I have ever seen this paper before. (Mr. Douglas: Of course if everybody takes that as the positive answer that it is not in his handwriting, why then I am content. The Court: Yes.)

Thereupon a duplicate of the application dated July 28, 1925, with picture attached, was marked by the Clerk, "Respondents' Exhibit 14 for Identification," and the same is attached hereto.

Thereupon the witness continued:

(Witness was handed his report of October 21.) Part of that report is true. The first part of the report, down to where it says, "5:25 p. m. subject came out and drove his car back to his home on 8th Street," is true. The following part is false: "At 5:40 p. m. subject came out of his house and entered car with woman and two children and proceeded to Mammouth, Md., about 22 miles S. E. of
664 Washington, D. C., and entered the third house on right side of the road on entering Mammouth (main road) from Mammouth. Subject remained here until 9:25 p. m. when he returned to his home in Washington, D. C., at 10:25 p. m. and woman and two children got out of car and entered subject's house." I can't say that Ruddy gave me all the false statement. After I left him that night he told me what to do about it. He said, "Put him out for a ride 25 miles. That car of his won't go any farther than that. That it is likely to break down." I put in Upper Marlboro, and I put by mistake Mammouth. "There is no such place as Mammouth, Maryland," I told Ruddy the next day, and he said, "That is all right, let it go at that." I didn't follow Glasscock anywhere at that time. I charged and received pay for 78 miles that day because Ruddy told me to put him out for a ride, and I did. I was with Ruddy that evening. The balance of the report, in which I say: "I remained in the vicinity of subject's house until 10:45 p. m. and observed all lights out in his home and returned to hotel at 11:30 p. m. discontinuing for the day" is true. After I left Ruddy I went back. Ruddy told me to put Glasscock out for a ride of 25 miles when I dropped him off of my car when we pulled into Wardman Park driveway at about 9:45 p. m. It was not in Ruddy's room. No one else was present. He had been in the car with me around town for a couple of hours. The report is all in my handwriting except the mileage with a parenthesis and the $24.61. I was paid the $13.26 for that 78 miles. The first 7 lines of my report of October 22nd are true. They are: "Continu-

ing on above operation I took up watch in vicinity of subject's home, 1013 8th Street, N. W. at 7:00 p. m. and at 7:25 p. m. subject came out of house and entered his car and drove to 14th and C Streets where he parked his car and walked to Somerville's National Brass Works
665 at 13th and D Streets and entered." The following part which begins "He came out at 12 noon and drove his car to his home" and ends "I took particular notice as to if any other car was following the subject's car and did not see any" is false. The remainder is true. It is: "The lights downstairs were extinguished at 9:00 p. m. and switched on upstairs until 9:15 and subject did not go out all evening. I returned to the hotel at 11:30 and discontinued for the day. I saw Ruddy that morning at 11 in my room at the Harrington Hotel. I was alone with him. I also did some other shadowing than that reported in the true parts of my report. Glasscock was home about 4:30, when I got there his car was home. I did not say anything about that in my report. In the report it is 3:40. His car was at his place of employment between 12 and 3:30. I was there. His house is about 10 or 11 blocks from the Harrington Hotel. (Witness was handed his report of October 23.) Part of the report of October 23 is false. The first part of the report, commencing with the words "Continuing on the above case" and ending "He did not come out again until at 2:00 p. m., when his family and himself entered machine," is true. From there on, as follows: "Drove to Upper Marlborough, Annapolis and then to Chesapeake Beach where they had supper at 5:30 P. M. Subject then drove back to Annapolis on same road a distance of 18 miles and from Annapolis over the Defense Highway to the fork of road south of Hyattsville in a traffic jam. I was cut off and tied up for about 10 minutes as this is intersection of Defense Road and Baltimore Road. I proceed on into Washington and directly to subject's home arriving there at 8:40 p .m. and subject's car was outside," is false. The remainder is true. It is: "The lights were extinguished downstairs at 9:05 p. m. and put on upstairs remaining lit until 9:30 and house was in
666 darkness. Did not see any more of subject. I returned to hotel at 11:00 p. m., and discontinued for the day." Ruddy did not give me the exact words of the

false part, but he told me to put him out for a long sleigh ride that afternoon. I used my own language and put him on a ride to Upper Marlboro. I did not go out on the Defense Highway or to Annapolis or anywhere else out of the city. I was hanging around Glasscock's home all day. I can explain why I charged and collected automobile trailing of $20 that day. I was up in the block above L Street on 8th when Glasscock drove around the block and down 7th Street, and on 7th the traffic light at the corner of K Street, he hit the green ball ahead of me and I was stopped and lost him. So I came around the corner again and hung around for a while and called Ruddy up and told him I had lost him, and he said "Stay on the job until he comes," and I did. I called Ruddy on two other occasions that day, and once I did not get him. I spoke to Robbins and he told me to remain there in case they wanted me they could find me. That evening I called him again. It was the 4th time, and I told him Glasscock has probably been out for a ride and how about today? I says, "I just missed that good mileage," or some words to that effect. He said, "That is all right. Show him out for a ride." I said, "I don't know how far he went. He has been gone for 4 or 5 hours." He said, "All right, put him out for a ride," and I did. I put the $20 on my report as expenses, and there it is. I did not bother with it. I got the $20.

Thereupon the following occurred:

Q. It was a false charge, wasn't it?

The question was objected to as argumentative, the objection sustained, and an exception duly noted, and the witness continued:

I was never out to this place. I got the description of the places from automobile maps. On the 22nd I
667 did not go to the Potomac Flying Field, yet I charged and collected $15 that day for automobile trailing. Ruddy told me to put $15 in for that day. (The witness was handed his report of October 24.) The report of the 24th is all true, but I was away from the vicinity of Glasscock's place of employment from 4 until 4:30. I charged and collected $15 that day for automobile trailing, and I did not drive over 10 miles. The report shows it. I did

not divide any of the fees with Ruddy. He gave them to me. I got it all. (Witness was handed his report of October 25.) Every word of the report of October 25 is true. (Witness was handed his report of October 26.) The false part of the report of October 26 is as follows: "At 6:20 p. m. subject, wife and children came out and entered subject's Oldsmobile touring car and they went for a ride through Anacostia and out in the country. Subject stopped along road as something was matter with his motor. He lifted left side of hood up and tinkered with the motor for about 5 minutes and then drove back to Washington, D. C." All of the rest of the report is true. The false part was put in at the instance and request of Ruddy, and none of it at my own instance. I left the vicinity of Glasscock's home about 5:45 to get a bite to eat, and came back and his car was gone. I called Ruddy and he told me to come to Wardman Park. I picked Ruddy up and we went to the Willard. Then we drove to vicinity of subject's house and then back to the Mayflower, where he got O'Reilly. We went to Wardman Park and Ruddy and O'Reilly went in. They came out in about 10 minutes, and we drove around, and we thought we were being followed, and then drove to the vicinity of Leroy Place and Connecticut Avenue, where he delivered the reports to the client. It was there Ruddy told me to put this false statement in the report of
668 the 26th. O'Reilly was there. I don't think he is deaf, and if he isn't, he heard Ruddy tell me that. Ruddy told me to put him out for a ride. He didn't tell me to put these exactly false words about through Anacostia. O'Reilly didn't take part in that conversation. (Witness was handed his report of October 27.) No portion of the report of October 27 is false. You want to ask Ruddy to explain the item of 63 miles. I didn't drive over 5 miles, and he O. K'd. the expenses. I got the money. I did not charge for an airplane ride on October 22. I never discussed it with Ruddy or O'Reilly. (Witness was handed his report of October 28.) The report of October 28 is true. There is nothing fraudulent about the expense account of that report that I know of. Merritt and I were shadowing together that day. About 4 p. m. on October 24th I went to the office of Mr. Roberts and Mr. Pomerene. I appeared before the grand jury on November 8. I testified under the

name of William V. Long. I did that on the advice I received on October 24. I don't recall right now who did give me that advice.

Thereupon the following occurred:

Q. Did Governor Pinchot so advise you?

The question was objected to as calling for conversation, the objection sustained, and exception duly noted.

Q. I will ask you if, before you went before the grand jury on October 24th, or any day between that and the time that you did go before the grand jury, did you seek advice as to what you should do about the use of the name Long, from Mr. Roberts, or Mr. Pomerene, or Major Gordon, the District Attorney, or Mr. Burkinshaw?

The question was objected to, the objection sustained and an exception duly noted; and the witness continued:

669 When I called on Mr. Pinchot I gave my right name, William J. McMullin. I gave Mr. Pomerene and Mr. Roberts my right name.

Thereupon the following occurred:

Q. Did you tell Governor Pinchot that you had been masquerading as William V. Long, an acquaintance and friend of yours in Philadelphia?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

Governor Pinchot did not advise me to testify before the grand jury in the name of William V. Long. (The question was objected to and the objection sustained.)

Thereupon the following occurred:

Q. Did Mr. Roberts and Mr. Pomerene advise you to testify before the grand jury as under the name of William V. Long?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I met Mr. Burkinshaw on November 8 and Mr. Gordon on November 12. I did not meet or see either one of them on

October 24. The only persons I saw in the Transportation Building were Messrs. Roberts and Pomerene.

Q. Did Mr. Pomerene or Mr. Roberts advise you to make the affidavit of November the 3rd?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

After I was asked to come down to Washington to make this affidavit, I did not consult with or talk to Major Gordon or Mr. Burkinshaw.

Q. Did you talk with Mr. Roberts or Pomerene, did you tell them that you had been asked to make an affidavit?

The question was objected to, the objection sus-
670 tained, and an exception duly noted; and the witness continued:

I don't think I ever disclosed to Burkinshaw or Major Gordon that my real name was McMullin and not Long. I think they knew it, I don't know from when. I went to Roberts and Pinchot under the name of McMullin. I went by myself before the grand jury on November 8. When I went to see Roberts and Pomerene I knew they were the Government's special counsel in charge of the Sinclair-Fall trial. After October 24 I continued to work for and with the Burns agents, and I acted under the direction of the Burns Agency.

Thereupon the following occurred:

Q. Were you acting under the direction of the government counsel as to what you should do about making these false reports?

Mr. Gordon: Objected to, if the Court please. He has answered the question.

Q. Did you tell them that you were continuing to make false reports?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I don't recall whether I saw Roberts and Pomerene after October 24. I communicated with them at their office. I made a memorandum for the use of the report of October

22, and put it under my pad in my room. I made no search to find it afterwards. It was there. I did not testify that I had lost it and didn't know where it was. I found it. I did not put it into anybody else's hands to produce here. (Mr. Current of the Ohio Penitentiary came into the bar of the Court.) I do not recognize that gentleman. I do not now remember whether I made a signed statement to the penitentiary authorities when I entered the penitentiary. (Witness was handed a paper.) The signature on this paper is mine. I do not know whether the fingerprint over the signature is mine. It might be. I think I put my fingerprint over that signature at the time I signed it. I do not remember. I did not know Frederick McMullin, whose name I forged. I have not a cousin by that name.

671

Thereupon the following occurred:

Q. You stated also on your cross examination on yesterday that there was but one check?

The question was objected to, the objection sustained, and an exception duly noted.

Q. When you were arrested on the charge of these forgeries, I will ask you did you not have books of blank checks on different banks and trust companies throughout the country?

The question was objected to, the objection sustained, and an exception duly noted.

Q. I now ask the witness the question if he means to continue and adhere to his statement that he was only in the penitentiary two months, and that he was paroled when he went out to the brickyard?

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon a paper entitled "Certificate of Parole" was marked by the Clerk "Respondents' Exhibit No. 15 for Identification" and the same is attached hereto.

Q. Were these the terms of a parole under which you got out of the penitentiary, namely, that "you make regular reports to this institution, the first of each month for six

months, and that you remain out of Ohio forever; no final release"?

672 The question was objected to, the objection sustained, and an exception duly noted.

Q. Isn't it true as a matter of fact that you remained in the penitentiary, and that you were not paroled until April 30, 1921, over a year and two months after you were sent to the penitentiary?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Do you not know that it was not until February, 1921, that you applied for a parole and that thereupon under the law a notice was published three weeks in a newspaper?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I don't remember that Mr. Dulfer was the prosecuting attorney in the case in which I was convicted. I am positive that on the morning of November 5, 1927, in Mr. Lodge's law office in this city, in the presence of W. J. and Sherman Burns, before I testified before the grand jury, that I did not say to Mr. Lodge that the statements in the affidavit of November 3rd as to my movements and activities were true. On that same occasion I did not draw a diagram to show how things were situated in the flying field. I didn't talk to Mr. Lodge about the incident. William J. Burns on that occasion, did not tell me to tell the truth to the grand jury, no matter what the truth was about the matter.

Thereupon a Certificate of Parole, Parole No. 3684, from the Ohio Board of Clemency, Thomas Mulcahy, Chairman, dated the 30th day of April, 1921, was marked "Respondents' Exhibit No. 16 for Identification," and the same is attached hereto.

Thereupon Certificate of Publication of Application for Parole, issued by the Collinwood News, Cuyahoga County,

Ohio, dated the 2nd day of April, 1921, was marked "Respondents' Exhibit No. 17 for Identification," and
673 the same is attached hereto.

Thereupon the witness was cross-examined by Mr. Wright as follows:

I was not in the District Attorney's office this morning. I was in the office next to his, that of Mr. Goldstein, an Assistant District Attorney.

Thereupon the following occurred:

Q. And you drew the distinction between in the District Attorney's office and Assistant's, when I asked you that, did you?

The question was objected to as argumentative, the objection sustained, and an exception duly noted; and the witness continued: I did not see his Honor, the Judge, go by this morning while I was in there, and slink back in my chair so he could not see me. I was sitting there all morning in the hallway. I was in Goldstein's office, and went out again and sat in the hall. I did not talk to anybody in the District Attorney's office this morning. I went there to keep out of trouble. (Witness was handed his report of October 22.) I wrote a memorandum on the morning of October 22nd when Ruddy gave me this information, and I went to go out of the hotel, and he said not to go out with it, to keep it in the room to hide it. I put in the memorandum which Ruddy told me to put, and afterwards copied it into this report. The part of the report that commences "He came out at 12 noon and drove his car to his home" and ends "I took particular notice as to if any car was following the subject's car and not see any" is the part made up from the memorandum. I copied all that was on the memorandum, but not word for word. It was December 3rd that I first saw this car, P 1738. Then I saw it was a two-toned car. I knew on November 3rd it was a two-toned car because O'Reilly said so at Wardman Park that night. Then Ruddy said the same thing, and then I said it was.
674 I was in Judge Wright's office that afternoon before I went to Wardman Park. Judge Wright did not inquire of me at length in his office that day as to my movements at the flying field. I am sure that I told Judge

Wright in his office that afternoon that this was a two-toned car, before I ever went to Wardman Park that night. In that conversation in Judge Wright's office I don't remember a young lady being called in to take some dictation. There was a young lady in the outer office. There was a young lady there when I first came in and the conversation opened between Judge Wright and me. She may have been called in. I don't recall. Judge Wright didn't question me for a half hour before the young lady was called in. I think it was 5 or 10 minutes. I said to Judge Wright that I followed Juror Glasscock over to the flying field across the river in Virginia. Judge Wright may have said to me that the flying field is not in Virginia, but in Maryland. I don't remember. I don't remember Judge Wright saying to me, "Well, you have got to cross the Navy Yard bridge to go to the flying field, into Maryland." I did not say to Judge Wright, "Oh, no, you don't. I went across the bridge that has the railroad tracks running alongside the road, and across another bridge, and there was a big yacht club there with a lot of yachts and this flying field is by the yacht club." I don't remember saying to Judge Wright that parking spaces were on each side of the entrance to the flying field, nor do I remember saying that Glasscock parked his car on the right of the entrance and that I, for fear he would see me, parked my car on the left of the entrance. I am positive I didn't say at that time that as I was parking my car at the left of the entrance I saw this same two-toned colored car parked at the right already. I did say to Judge Wright that I got out of my car and went up to verify the license number on this two toned car, and
675 while I was verifying that license number, I looked and saw Glasscock behind his car in talk with another man. I am positive I didn't say I parked to the left of the entrance. When I made my application for a marriage license to a girl named Lindsey, in Delaware County, Pennsylvania, there was laid before me a printed application blank to fill out.

Thereupon the following occurred:

Q. Did not that paper, which was shown to you have the word "Marriages" written on it, and a blank space for the word "No"?

The question was objected to as calling for the contents of a paper, the objection sustained, and an exception duly noted.

Q. Did you, with your own hand, write the word "No" in any part of that application blank?"

The same objection was made, the objection sustained, and an exception duly noted, and the witness continued:

I am doubtful whether this application for employment with the Burns Agency in 1925 is in my own handwriting. (Witness took his application for employment in 1927 and his application for employment in 1925 and examined the word "White" in the second line of both applications.) Both words "White" resemble my handwriting, but I am sure it is not. (Witness looked at the abbreviated word "Philadelphia" in both papers.) They do not refresh my recollection that they were both written by my hand. (Witness looked at the word "none" in both papers.) Those two words do not even look alike. (Witness looked at the word "No" written three times on each paper.) Those words are not identical as far as I can see. They do not refresh my recollection so that I now know that they are both written by my hand.

Thereupon the following occurred:

676 Mr. Wright: I ask your Honor formally that your Honor now observe these two papers, in respect to the words to which I have called the witness' attention, so that you may judge of his credibility in saying to you, in swearing to you that he did not write these two papers. I tender them to you with the hope that you will inspect these words for that purpose.

The application was refused, and an exception duly noted, and the witness continued:

As far as I remember when I made application in 1925 to the Burns Agency I did not put my fingerprints on anything. I am willing to let you take my fingerprints now to see whether they correspond to the fingerprints on the application of 1925. (Mr. Gordon objected to this.) (The court refused to instruct the witness that he could give his fingerprints if he wanted me, and an exception was duly

noted.) I remember testifying something to the effect that the application to the Burns Agency, which I made under the name of Long, was wholly true as to the name used, Long. It was also true about myself, my own address and all.

Thereupon the following occurred:

Q. Were not the statements made in your application in 1927 to the Burns Agency, wholly false as to you, McMullin?

The question was objected to as being already answered, the objection was sustained, and an exception duly noted, and the witness continued:

I saw Ruddy several times before the first time I saw him in Washington. I do not know how many. I was employed by the Burns Agency about October 15, 1927. I came here October 19. I had never seen Ruddy before I made that application to the Burns Agency. I do not remember any time between October 13 and October 19 that I had a substantial conversation with Ruddy. He first asked me to make a false report in Washington the
677 day I arrived here, the 19th. Nothing was said by me to Ruddy on the subject of making a false report on the 19th. I did it without protest. I made another false report at Ruddy's direction on the 20th. The next one was the 21st, the next one the 22nd, the next one the 23rd and the next one the 26th. There were 6 in all. Then a false affidavit was made on November 3rd. I talked with Governor Pinchot on October 24. I think his secretary was present. I made up my mind to talk to Pinchot that same morning. Nobody was with me when I made up my mind. I saw Mr. Roberts and Senator Pomerene later in the day, around 4 o'clock. I was in communication with these gentlemen daily after the 24th by telephone. I talked mostly to Mr. Roberts, and I talked to him every day after the 24th. I called him whenever it was convenient for me. I was in Judge Wright's office twice, once on November 2nd and once on November 3rd. I did not see Judge Wright on November 2nd. I asked the stenographer what I was wanted there for. She didn't tell me she thought

they wanted me to make an affidavit. She didn't know anything about it. Nobody in Judge Wright's office told me I was wanted to make an affidavit. Ruddy spoke to me about it on the afternoon of the 2nd about 3 o'clock, after I had been at Judge Wright's office. I do not know Phillip Ershler. I remember seeing him in Judge Wright's office on the 2nd of November. He did not tell me I was wanted to make an affidavit. He told me to wait until Judge Wright got down, that he was going down to the court house to see what time Judge Wright would be up.

Thereupon the following occurred:

Q. Did you not say, in answer to this question: "Did you see Ruddy that evening at the Wardman Park Hotel, and did you see Judge Wright again," did you not answer "Yes, I did"?

678 The question was objected to, the objection sustained, and an exception duly noted.

Q. Wasn't the first time you talked with Ruddy on the subject of an affidavit in the evening, in the Wardman Park Hotel, the evening of the day you had been to Judge Wright's office and had seen Judge Wright on the 3rd of November?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I do not recall what time it was on November 2nd that I called Mr. Roberts. The subject of an affidavit was not discussed by me with Mr. Roberts on that occasion. I did not have a conversation with Mr. Roberts or Senator Pomerene relative to the affidavit before I went to Judge Wright's office on November 3rd. I do not recall whether I had a conversation with Mr. Roberts on the subject of that affidavit before November 3rd.

Thereupon the following occurred:

Q. Now that you think about it, do you remember that you had a conversation with Mr. Roberts on the subject of the affidavit, do you not——

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I do not think I had a conversation with Mr. Roberts on the subject of the affidavit. There wasn't any need to.

Q. You have never had one with him?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I am positive Judge Wright talked to Ruddy on the telephone from his office. I think this occurred in Judge Wright's office on November 3rd. That I was reciting the circumstances of Glasscock leaving his place of employment, and I was not sure as to the time, whether it
679 was 12:30 or not; that I said I thought it was 12:30, but I was not sure. It was not at that point that I wanted to see my report in order to be sure about the time. I told Judge Wright that when Glasscock left his place of employment at Somerville's he drove east on D Street to Pennsylvania Avenue and turned into Pennsylvania Avenue, and I followed him in my car, and as his car turned into Pennsylvania Avenue this car, P-1738, cut in ahead of me and got between Glasscock and me, and after going along Pennsylvania Avenue for a while Glasscock turned off into another street, and this same two-toned car followed him into another street, and when I turned into that street I put the license number of this car down on a card at that time, and at the flying field I compared the number of the two-toned car with the number I had put on the card. I did not talk with anyone else in Mr. Robert's office, except Mr. Roberts, either on the telephone or face to face, after October 24. I first knew that an affidavit was wanted on the Glasscock incident on the afternoon of November 2nd. I did not regard it as important. I don't think I talked with Roberts on the subject of the affidavit. I was in Major Gordon's office on November 12th when an assemblage of newspaper men were present. I did not hear Major Gordon make a statement to the newspaper men then. I was there when he was in the presence of these newspaper men. I don't remember whether I made a statement to the newspaper men on that occasion.

Thereupon the following occurred:

Q. Did not Major Gordon make a statement to the newspaper men on that occasion, thus: McMullin declined to make the affidavit until he had seen the report dealing with Lamb. He was sparring for time until he could see Roberts. He was told to return to Philadelphia, which
680 he did after reporting to Roberts. Original reports had been sent to New York and a Burns Agent was ordered to take it to Washington so McMullin could see it.

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I don't remember what I said at all to any of the newspaper men.

Q. Did you not state to the newspaper men on that occasion that you were sparring for time until you could see Mr. Roberts?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you not state to the newspaper men on that occasion that you were told to return to Philadelphia, which you did after reporting to Mr. Roberts?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did not Major Gordon on that occasion state to the newspaper men in your hearing that meanwhile Roberts had told McMullin to make the affidavit as requested? Did you not hear him say it?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did not you state to the newspaper men on that occasion that Roberts had told you to make the affidavit as requested?

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I do not know a lady named Theresa Marquina. I know a lady named Raliefe Cagarian. I did not marry her when I was married to another woman and undivorced from her. I married her on February 21, 1918. That
681 was the first time I was married. I did not marry Theresa Marquina. I never heard of such a person. I know Miles C. McCahill, a Secret Service man. I first met him on November 12, 1927, in the office of Major Gordon. I did not make the acquaintance of any other Secret Service men in November or October here in Washington.

Thereupon the following occurred:

Q. When you got out of the penitentiary in Ohio and left that State, where did you go to work?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you go to work at all, and, if so, how soon after you left Ohio.

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I first knew that Lamb owned car P-1738 some time Sunday, the 23rd, Ruddy or O'Reilly said something about it. I was at the Traffic Bureau once. That was October 22nd. I did not find out the name of the owner of car P-1738 at the Traffic Bureau that day. I was sent down by Ruddy to get a set of license tags and I got them. I was not down there with Ruddy and O'Reilly. On the 24th I talked to Governor Pinchot and Mr. Roberts and Mr. Pomerene.

Thereupon the witness was further examined by Mr. Gordon, as follows:

(Mr. Horace R. Lamb arose) I first saw that man on November 8 in Mr. Burkinshaw's office. I didn't know him then.

Thereupon **Norman L. Glasscock** was called as a witness for the United States, and being first duly sworn, testified as follows:

I was a member of the jury in the Fall-Sinclair
682 case beginning October 18, 1927. At that time I resided at 1013 8th Street, N. W., and worked at the Thos. Sommerville Company, 312 13th Street, N. W., and I met Horace R. Lamb before going before the grand jury about November 1st, several days after the mistrial, and after I was discharged as a juror. That's the first time I ever saw him in my life.

Thereupon the following occurred:

Q. Will you state whether or not on the 19th day of October, while that trial was still in progress, that at 8 p. m. of that evening that you came out of your home and entered a small car bearing license P-993, and that another man was with you, about 30 years of age, 5 feet 8 inches tall, about 150 pounds in weight; that you drove with him to the Post Office Building at 11th and Pennsylvania Avenue and stayed in the building about half an hour, and leaving there you returned to your home, the other man drove off?

The question was objected to as not being operative in any way, positively or legally, against the respondents, the objection was overruled and an exception duly noted, and the testimony admitted subject to strike out; and the witness continued:

I did not. I do not know a man by the name of Burr. I was not in court the other day when Mr. Burr was on the stand. I didn't ride around with anyone on October 19. On October 20th at lunch time I did not leave the court house and go to Curry's Store at 3rd and D and remain 15 minutes, and come out of the store reading a newspaper and then proceed to D Street, to 4th, and stop to read the paper, and then drop the paper and slowly return to the court house. I don't say that I didn't go into the store, but I didn't buy a newspaper, or I didn't read a newspaper. I bought cigars there on several occasions.
683 I never ate lunch there. Every day I was on the jury I went home to lunch. I did not, at 8:15 p. m. on the 20th, accompanied by two women and another man, enter my car and drive slowly down through Potomac

Park and proceed to 11th and F and park the car and enter Loew's Theater.

Thereupon this line of questioning was objected to on the ground that there was no issue as to the false statements of McMullin, the objection — overruled and an exception duly noted, and the witness continued:

I did not drive through Potomac Park on that day or on that occasion. I do not think I was in the park at any time during the trial. I have not been in a theater in over a year. On October 21, 1927 I did not drive two children and a woman out into Maryland. I did not go into Maryland that day at all. On the 22nd I went to work at Somerville's at 7:00 a. m. and left there at 4:30 p. m. I did not go home to lunch that day. I ate lunch next door. I went home at 4:30. That evening was my little girl's birthday, and I had some children in from next door and some nieces and nephews of mine. They stayed until 8:30 or 9:00 o'clock and I did not go out any more after that. I was not at Potomac Flying Field that day. I do not know today whether or not Lamb had an Oakland Roadster.

Thereupon the witness was cross-examined as follows:

McMullin's report of October 23rd contains the following: "Continuing on the above case, I proceeded to the vicinity of subject's home at 7:30 a. m. and took up watch. I did not see any signs of subject until at 10:30 a. m., when subject came out and was tinkering around his car which was in front of his home. He did not come out again until 2:00 p. m., when his family and himself entered machine." That statement is wholly false.

Thereupon **Horace R. Lamb** was called as a wit-
684 ness for the United States, and being first duly sworn, testified as follows:

I first came to Washington about the middle of September, 1926, from New York City. I am not a member of the District of Columbia bar but of the New York bar. I took my college course and law at Cornell in 1920. In October, 1927, I was special assistant to the Attorney General in matters and cases arising under the Federal Anti-Trust laws, associated with Colonel Donovan, assistant to the

Attorney General. I was appointed on September 15, 1926. I was out of the city during the week preceding October 22. I was out of the city on October 15, and returned to Washington on Thursday morning, October 20th. I was at that time and am now the owner of an Oakland Roadster that bore 1927 license plate P-1738. I reside at 1409 16th Street, N. W. In the rear of that house there is a garage in which I keep my car. On the morning of Saturday, October 22, it was in a garage in the rear of 1743 Rhode Island Avenue. The proprietor of that garage is named Aiken. It was there for the purpose of some minor repairs. I took it there on my way to the office that morning and I got it back between 1 and 1:30. I went to that garage to get it, and I found it standing in an alley just outside of the door of the garage. I then went to the Washington Golf and Country Club in that car. I went nowhere else in town after leaving that garage before going to the country club. I went down Connecticut Avenue to K Street, out K to Washington Circle in Pennsylvania Avenue, straight out Pennsylvania Avenue through Georgetown and turned the Key Bridge to Rosslyn, and took the first road to the right across the bridge, and proceeded straight on out towards Falls Church, and took the road which turns off to the Washington Golf
685 Club. I remained there all afternoon playing golf.

It must have been 5:30 when I left the Golf Club. I played with Major Cushing. I was not at the Potomac Flying Field that day. I saw Juror Glasscock on the stand. I did not know him while the case was on trial.

Thereupon the following occurred:

Q. Did you ever see him during the time the case was on trial?

Mr. Wright: We are all objecting, of course, to this, your Honor. It comes in under your former ruling?

The Court: Yes.

The Witness continued:

I never saw him until one day I was introduced to him just before I was summoned before the grand jury in this building, that being the first time I was ever in this building. That was sometime during the first week or 10 days of November.

Thereupon the witness was cross-examined as follows:

As far as I know, no one other than myself drove my car at any time on Saturday, October 22. Of course, during the time it was at the garage it was out of my control.

Thereupon **Frank J. O'Reilly**, a witness heretofore sworn, was recalled and testified further as follows:

(Witness was handed Government's Exhibit 353 for identification). I signed this paper writing and thereafter swore to it before a Notary Public, Lawrence G. Moore on November, 4, 1927 at Wardman Park Hotel in the presence of Mr. Ruddy, Judge Wright and Mr. Lodge. I do not know whether Robbins was in the room or not.

Thereupon Government's Exhibit 353 for identification was offered in evidence, the same objection was made that was made about the other affidavit, and it was ad-
686 mitted as to Respondents Sinclair and Day under the ruling already made.

"GOVERNMENT'S EXHIBIT No. 353."

"District of Columbia, *ss:*

"Frank J. O'Reilly, being first duly sworn, says that he is a resident of Brooklyn, New York, that he is an assistant manager of the Burns Detective Agency and on the 24th day of October, 1927 was in the City of Washington on the business of that company. He went to the Department of the District Government wherein is kept the record of the names of those persons to whom automobile license tags are issued and found upon the records of that Department in the District Building that the automobile bearing the license number P-1738 was registered in the name of H. R. Lamb. Affiant ascertained that an H. R. Lamb lived at 1409—16 Street, N. W., and on October 26th about 9:20 A. M. affiant saw a gentleman emerge from 1409—16th Street, N. W., and the gentleman went directly to the Racquet Club on 16th Street, entered there, remained about twenty minutes, affiant saw him go out and followed him. The gentleman went directly in the Department of Justice of the United States at the corner of Vermont

Avenue & K Streets. Affiant remained in the vicinity of the Department of Justice until about 1:25 P. M. of the same day, at which time the same gentleman emerged from the Department of Justice. At 4:30 P. M., of the same day, affiant was in the neighborhood of the Department of Justice and saw the same gentleman emerge therefrom at about that hour; he proceeded on foot directly to number 1409—16th Street, N. W.; shortly after the gentleman entered 1409—16th Street, N. W. affiant saw him emerge from an alley in the rear of said house driving an automobile which bore the license tag number P-1738. About 1:15 A. M. the next morning, affiant saw the same gentleman drive an automobile into the same alley in the rear of 1409—16th Street, N. W., and that automobile bore the license tag number P-1738.

FRANK J. O'REILLY.

"Sworn to before — and subscribed in my resence this 4th day of November, A. D. 1927.

LAWRENCE G. MOORE,

And the Notarial Seal. *Notary Public.*"

The witness continued:

That affidavit was made at the request of Ruddy. On the morning of November 2nd I was told to go to Judge Wright's office at 3:00 p. m. Ruddy did not say at the time as to what my mission would be at Judge Wright's office.

Thereupon the witness was cross-examined as follows:

Every word in that affidavit is true.

687 Thereupon **Thomas Ellis Lodge** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am a member of the bar of the Supreme Court of the District of Columbia. I have been practicing law since 1922. I was an Assistant United States Attorney for this District from October, 1922 to March, 1926. For some period of time prior to November, 1927, I was one of counsel for the Burns Detective Agency. I am not on an annual retainer by the Burns Agency, but I am frequently consulted by them, and have been over a period of 3 or 4 years, both by the agents as individuals and by the organization.

Thereupon the following occurred:

Q. When, in connection with the case of United States v. Fall and Sinclair, if any at all, did you have any dealings with the Burns Detective Agency or any of the representatives or agents of that concern—when?

Mr. Hoover: We make the objection to this, and will have the understanding, if your Honor please, that it comes in under the same ruling, so as to have the record straight on it.

The Court: Yes. If it should develop in the same way.

Mr. Hoover: If we may have it just understood, your Honor, that it is subject to a motion to strike, we won't make the objection continually.

The Court: Yes.

The witness continued:

My recollection is that it was sometime in the forenoon of November 2, 1927. I came in connection with the Burns Agency on that occasion by telephone from either W. J. Raymond, or Sherman Burns. I am inclined to think it was W. J. Burns, but I am not positive. I had a talk over the long distance telephone with that person, and thereafter I got in touch with Ruddy in the afternoon of
688 that same day. He came to my office alone. I had a conversation with him. I next saw him that evening at Wardman Park, I think. There were a number of agents in and out of the room there. I did not know any at that time except Ruddy by name. I think O'Reilly was there. I am not sure. I do not think I saw Ruddy the next day, the 3rd, but I saw him the next evening. Judge Wright, Ruddy, O'Reilly, Robbins, McMullin alias Long, and Shoemaker were present. There were several others present, but I did not know their names. It was at 8:30 p. m. at Wardman Park. I do not know whether the report of October 22 was there. A handwritten report was present. It was produced by Shoemaker. (Witness was handed Government's Exhibit 353.) This physical paper was once mine. The writing on it is not. I will say I did not fill in the word abbreviated "Crim. 4324"; the words "In Safe"; the words "United States v. Harry F. Sinclair and Albert B. Fall", or the words "Affidavit of William

V. Long", on the file stamp. (Witness was handed Government's Exhibit 352.) I was in the room when that paper was signed, and at the time Mr. Moore was there. Whether I actually saw the signature applied to the paper I am not entirely clear. I do not know who wrote the words on the back of the paper. I never saw the writing before. It is not mine. I think I was present when Government's Exhibit 353 was signed "Frank J. O'Reilly", but I am not positive that I saw him write his name on the paper. There are two rooms in that apartment. On that occasion these papers, Government's Exhibits 352 and 353 passed into my physical possession. At that time they did not have legal backings on them. On the morning of Friday, November 4th I brought these physical papers to the court house of the Supreme Court of the District of Columbia. They then had legal backings on them. I put them on in my office in the Columbian Building. Judge Wright's office is 927 15th Street. I have never
689 been in his office. When I brought Exhibits 352 and 353 to this court house, Mr. Justice Siddons took them into his hands, and laid them on his desk in his office. It was a few moments before 10 a. m. There were no words on the backings then. They were handed to the Justice at the suggestion of a joint conversation had between Judge Wright, Mr. Ruddy and myself. One day prior thereto I knew that Ruddy was connected with the Burns Agency. At that time and prior thereto I did not know that Long was one of the agents that had been brought here by the Burns Agency. I never saw him before the evening before. I heard some things mentioned about Long on the 2nd. Prior to that time I never heard of McMullin or any other agent who was here. I did not know at the time of the making of this affidavit, Exhibit 352 that Wm. V. Long was a person who had been sent to Washington by the Burns Agency. I knew that he was there on the occasion of the making of the affidavits and purported to be a Burns Agent. At the time I brought Exhibit 353 signed by Frank J. O'Reilly to the Justice of this court, I did not know that Frank O'Reilly was a person that had been brought to the District by the Burns Agency. I simply knew that he was present at that time and purported to be a Burns Agent. I saw William J. Burns at the Union Station about 8:00

p. m. on Sunday, November 6. Sherman Burns was with him. Ruddy was with me. We went to the Willard Hotel. I am not positive I saw W. J. Sherman Burns the next day, but I think I did in my office. I don't know whether Ruddy was present. On Tuesday, November 8th, W. J. and Sherman Burns, Ruddy and Long, or McMullin were in my presence in my office, which consists of 3 rooms. They were there about 30 minutes. McMullin and Ruddy went out to lunch. When they went out of my private office the door was closed. Whether they stayed in
698 the outer office I have no way of knowing. McMullin was in my presence at my office about 30 minutes when were also present W. J. and Sherman Burns. I don't know whether W. J. Burns went before the grand jury that day. I do not recall a newspaper man coming to me and telling me that W. J. Burns had given out a statement, and asking me for a copy of the affidavits referred to in W. J. Burns' statement, and my coming over and giving the copies to W. J. Burns in the corridor of this court house near the grand jury room. Where I saw W. J. Burns, and I think Sherman Burns was there and probably one or two other people, was in front of Miss Kopp's office. I don't remember being down in the grand jury room at all. It might have been down the hall that way, but I don't remember. Miss Kopp is telephone operator in the District Attorney's office, on the 3rd floor. The corridor in front of her office is the corridor that leads to the grand jury room. (Mr. Duffy stood up in the back of the court room.) I recognize Mr. Duffy as a newspaper man. I don't remember whether I saw him that day or not. Prior to the time I was in the corridor at the place that I have indicated, a gentleman who said he was an Associated Press man came to me and asked for copies of the affidavits referred to in the statement that W. J. Burns had given out to newspaper men. I do not know whether or not it was Duffy. I did not comply with that request. I brought copies of the affidavits to the corridor that leads to the grand jury room.

Thereupon the following occurred:

Q. Did you bring these papers?

The question was objected to as immaterial, the objection overruled, and an exception duly noted; and the witness continued:

On that occasion I think I gave carbon copies of those affidavits to W. J. Burns. There were other people
691 present and they might have been put in Sherman Burns' hands. I do recall giving them to one or the other.

Q. Just answer this question yes or no. Did you on that occasion observe what, if anything, W. J. Burns or Sherman Burns did with the copies of these exhibits, Government Exhibits just mentioned, after they passed from your possession into the possession of the one or the other of them?

The question was objected to as immaterial, the objection overruled, and an exception duly noted; and the witness continued:

No, I don't remember.

Thereupon the witness was cross-examined by Mr. Douglas as follows:

I had a long distance telephone with one of the Burns. I think it was W. J. Burns. I was requested to do a certain thing, with the result that in order to be prepared to do that I saw Ruddy to talk to him about it.

Thereupon the following occurred:

Q. Your conversation over the telephone was with reference to seeing the District Attorney, wasn't it?

The question was objected to as calling for the conversation, the objection was sustained, and an exception duly noted; and the witness continued:

I was not present when the O'Reilly affidavit was prepared. Judge Wright and I, with the assistance of some of the others that were there, prepared the McMullin affidavit. It was gone into in very great detail, the facts that were put into the paper. I think McMullin read it after it was finally typewritten. He took up in the course of the preparation the various paragraphs prepared by Judge

Wright and me, paragraph by paragraph and sentence by sentence. It was gone into very carefully. While
692 I was there Ruddy did not ask or request or command McMullin to make that affidavit. I went over this affidavit carefully with McMullin after Judge Wright had made it, and McMullin drew me a diagram of the Potomac Flying Field.

Thereupon the following occurred:

Q. Do you know whether or not that diagram he drew for you was an accurate one of the Potomac Flying Field?

The question was objected to as beyond the scope of the direct examination, the objection was sustained, and an exception duly noted.

Q. Didn't he tell you before that paper was signed, in response to your direct inquiry, that the statements, all the statements in that affidavit were true, as a matter of fact?

The question was objected to as beyond the scope of the direct examination, the objection was sustained, and an exception duly noted; and the witness continued:

I put nothing whatever in the shape of writing on the backs of those affidavits. Whatever endorsement were placed there after I had handed them to the Judge and by someone else that I do not know of. I had a very, very brief conversation with Judge, if conversation is a mere sentence. I did not file those affidavits in the Sinclair-Fall case in the Clerk's office. I did not cause them to be filed by anyone.

Thereupon the following occurred:

Q. Did you request or direct anyone to file them?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you have any authority from William J. Burns, Sherman Burns or Vietsch or any one else to file those affidavits?

The question was objected to, the objection sustained, and an exception duly noted.

693 Q. When you handed these affidavits to Justice Siddons, what conversation did you have with the Judge or what did you say to him concerning these affidavits?

The question was objected to, the objection sustained, and *and* exception duly noted, and the witness continued:

I heard most of McMullin's testimony. On November 8, I believe the two Burns were at my office twice. I do not remember McMullin being there twice. McMullin was in the room with Mr. Burns, Sr., and Mr. Burns, Jr., and me about half an hour. I had a conversation with him on the subject of this affidavit.

Thereupon the following occurred:

Q. Did McMullin say to you and to William J. Burns and Sherman Burns that the statements in the affidavit of November 3 were true?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did Mr. McMullin on that occasion, at your office, in the presence of William J. Burns and Sherman Burns draw a diagram of the Potomac Flying Field?

A. He did.

The question was objected to, the objection sustained, and an exception duly noted.

Q. When Mr. Williams J. Burns came down here on the evening of the 6th, it was in response to a subpœna to testify before the grand jury, if your know?

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon the witness was cross-examined by Mr. Wright as follows:

I recall when Judge Wright called at my office on
694 the morning of November 3rd.

Thereupon the following occurred:

Q. In that conversation do you recall telling Judge Wright that the McMullin reports were on the way from

New York to Washington and would be at the Wardman Park Hotel that night?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

There was more than one room to the suite of rooms that Ruddy had at Wardman Park. Immediately inside the main hall door was a little alcove, 4 or 5 feet square, and a room on each side, one to the left and one to the right. I was in the room to the left when Judge Wright came in. Mr. Shoemaker was a Burns agent. He is now deceased, I am informed. He and Robbins together did the typewriting of the affidavit. That was done in the other room, the room to the right. Those other gentlemen whom I have mentioned were mostly in the other room when the affidavit was being prepared. When Judge Wright came in Ruddy was on one side of a small table in that left room, and I was on the other. The table was about a foot and a half wide, and not over three feet long. When Judge Wright sat down at the table he produced a paper that had a few lines of typewriting on it. Judge Wright sat one one side of a small table and I sat on the other. McMullin stood most of the time, and part of the time I think he had a chair there by us. Ruddy was in and out of the room, as was O'Reilly and Robbins. Shoemaker sat there almost the entire time. This original report, of which a copy was shown here a moment ago, that came down from New York, had been read.

Thereupon the following occurred:

The Court: Now we are going into the conversation.

Mr. Wright: May it please your Honor, I reserve
695 an exception to the exclusion of the conversation, because it is a part of the res gestae of the incident of preparing the affidavit, in my judgment.

The Court: You may have your exception, sir.

Q. Do you recall McMullin actually having the report in his hand?

A. Yes, sir.

Q. Do you recall Judge Wright asking him if he could not tell from his report whether or not it was 12:30 when Glasscock left Somerville's on October 22nd?

The question was objected to, the objection was sustained, and an exception duly noted; and the witness continued:

I recall Judge Wright writing on a piece of paper, then sending it out to the typewriter in the other room, and writing a little on another piece of paper and sending that out to the typewriter until the affidavit was completed. I separate papers, before they were sent out.

Thereupon the following occurred:

Q. Do you recall whether or not on each occasion, after Judge Wright read from the paper to McMullin that he said it was correct?

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon the witness was further examined by Mr. O'Leary as follows:

Mr. Shoemaker died before Christmas of 1927.

Thereupon **Raymond J. Burns** was called as a witness for the United States, and being first duly sworn, testified as follows:

626 I reside at Ossining, New York, and am president of the Burns Detective Agency. I am the son of William J. Burns and a brother of W. Sherman Burns. The William J. Burns International Detective Agency is a corporation, incorporated in the State of New York in 1909. W. J. Burns and myself were the founders of that corporation. At the present time I am president and W. Sherman Burns is secretary and treasurer of the corporation. Sometime in December I received a subpœna requiring me to appear here on a certain day and bring with me certain books and papers. In response to such subpœna I brought those books and papers with me, and I have them now.

Thereupon a paper was marked by the Clerk "Government's Exhibit 356 for Identification" and handed to the witness; and the witness continued:

This paper is an extract from an Agency report containing election of officers of the Burns Detective Agency, and stock ownership in said company. There are three stockholders in that company. They are Annie M. Burns, who is the wife of W. J. Burns, W. Sherman Burns and Florence Seipel, who is a sister of W. J. Burns. There are fifty shares of capital stock in the corporation. Annie M. Burns owns 47 shares, W. Sherman Burns owns two shares, and Florence Seipel owns one share. W. J. Burns is on a retainer fee of $5200 a year by the New York office of the Burns Agency. He is on that fee at this time and he received that fee during the year, 1927. He is paid that fee purely in an advisory capacity. Such fee is paid out of the New York office of such corporation. The title of that corporation is taken from the name of my father, William J. Burns.

Thereupon the witness was cross-examined as follows:

W. J. Burns has no office in the suite of offices of the Burns Detective Agency in New York. He uses my
697 office when he comes in. He was originally president of the company. He resigned in March, 1921. This pay or salary in the position of advisor to the Agency commenced in 1925. My father does not now nor has he for the last two years taken any active part in the Agency's work. He might come down to the office of the Agency once a week, and then he might not come down but a couple times in a month. He has a real estate office uptown. Since I have been president, and since W. J. Burns' salary as adviser of the Agency commenced, he has not done anything whatever in connection with the Agency, even in the shape of advice, unless his advice was sought either by me or my brother, W. Sherman Burns. His advice was not sought in connection with this particular employment, the shadowing the jury in the Fall-Sinclair case.

Thereupon the witness was further examined by Mr. Burkinshaw as follows:

Thereupon a sheet from the register of the Hotel Willard October 13, 1927, showing the signature of one W. J. Burns was marked "Government's Exhibit 357 for identification and was handed to the witness.

The handwriting on that paper looks like that of William J. Burns, the respondent in this case.

Thereupon **George E. Durno** was called as a witness for the United States, and being first duly sworn, testified as follows:

I reside in Washington and am employed by the International News Service as staff reporter. I have been attached to the White House as representative of the International News Service for the past two years. I know W. J. Burns in a newspaper way. I saw him on the morning of November 7, 1927 in the corridor outside of the grand jury room. A number of other newspaper men were present.

698 Thereupon the following occurred:

Mr. Hoover: If the Court please, we want to be recorded as objecting to all this line of examination so far as Mr. Sinclair is concerned. It is not admissible at all against him.

The witness continued:

I saw W. J. Burns coming from the direction of the grand jury room. On the occasion of that meeting, a conversation ensued. He addressed all the newspaper men.

Thereupon the following occurred:

Q. On that occasion state to the best of your recollection what was said by Mr. William J. Burns?

The question was objected to as showing nothing on the issues of this case at all, the objection overruled, and an exception duly noted, and the testimony admitted as against William J. Burns, subject to a right to move to strike it out in so far as it is claimed to have a bearing on the action of the other respondents; and the witness continued:

W. J. Burns gave us copies of the affidavit signed by William V. Long. He said he had filed it with Justice Sid

dons on the Friday preceeding and wanted to know why the Government had not done something about that. He said, "All of our investigations show that the only tampering was done by the Government itself." He said that the public was being misled into believing that the defense in the oil trial had no right to keep the jury under surveillance but that as a matter of fact as long as there was no approach, that the defense had the same privilege in that respect as the Government; that all of the Burns Agents had been honest and sincere.

Thereupon **Edward J. Duffy** was called as a witness for the United States, and being first duly sworn, testified as follows:

I reside at 2817 13th Street, N. W., Washington, and am a reporter for the Associated Press. I know W. J.
699 Burns by sight. I saw him the day he testified before the grand jury. I am not able to fix the date. Mr. George Burns was present on that occasion, and there ensued a conversation.

Thereupon the following occurred:

Q. I will ask the witness to relate to the best of his recollection what respodnent William J. Burns said on that occasion.

Mr. Douglas: That is subject to that other ruling?
The Court: Yes.

The witness continued:

I was only there about the first 5 minutes. Mr. Stoddard and Mr. Burns reached the middle of the hall, and he said that the newspapers had only showed one side of the case, and if we were willing to listen to him then, he was willing give the other side of the case and would prove that the only tampering that had been done had been done by the Government, and affidavits to that effect were filed, and he charged the government with keeping them from the public and asked us why we didn't go after them and give both sides of the case. To the best of my recollection he said he filed the affidavits. While I was there no reference was made to an attorney named Ledge. I don't think there

was any reference to the time that such affidavits had been filed. In consequence of what I heard on that occasion I first went into Justice Siddons' office and found he wasn't there, that he was in court. I went into the court to see if I could talk with him, and Mr. Stickney, the Clerk of the Court, said no. I then left and went to the office where the Marriage License Clerk is, to see whether they knew of any affidavits being filed. Then I came back to Justice Siddons' court and talked with Mr. Stickney. Thereafter that day I went to attorney Thomas Lodge.

Thereupon the witness was cross examined as follows:

700 To the best of my recollection, W. J. Burns said "I had filed." There was some doubt in my mind as to what he said until I looked up our stories in the office and found they said that Mr. Burns said he had filed the affidavits. To the best of my recollection he used the word "filed", but he might have used something else. I went to the clerk's office and asked the clerk there if he knew of any such affidavits being filed, and he said no. While I was there Mr. Burns did not point to Mr. King and say, "there is the only man that has been tampering with the jury and he ought to be put in jail." I did not hear that part of the conversation.

Thereupon **George R. Aiken** was called as a witness for the United States, and being first duly sworn, testified as follows:

I live at 1645 Spring Road, I am an automobile repair man and the proprietor of my own establishment at 1743 Rhode Island Avenue. I know Horace R. Lamb, the special assistant to the Attorney General. To my knowledge he is the owner of an Oakland Roadster, 1926.

Thereupon a Job Card was marked by the clerk "Government's Exhibit 358 for identification."

I saw Mr. Lamb on Saturday, October 22nd. He left his car at my place of business on Friday, the 21st and got it on Saturday, the 22nd. (Witness was handed Government's Exhibit 358 for identification.) This is a job card that refers to the work done on Lamb's car on October 22. The car was at my place all Saturday morning until be-

tween one and two o'clock. Lamb came down to the place exactly 12 o'clock. The car was out and I told him he could not get it for at least a half hour. He left and when he came back the car was back and had been parked alongside of St. Matthews Church and he came into the office, and asked if it was ready. That was between one
701 and two. I am unable to fix the time specifically.

That day an oil purelator was put on the car. The car was out twice during the period it was at my place. On one occasion I took it out myself, and on the other occasion my helper took it out. I used it Friday. Howard Kenny is the helper that took it out Saturday. He is still in my employ. He lives at 1610 M Street, and is colored. He took the car out about 10:00 a. m. Saturday. He was gone fully 45 minutes. When I had it out Friday I drove out Massachusetts Avenue extended back out to Wisconsin Avenue, then back to 1734 Rhode Island, and from there to 408 10th Street, N. E.

Thereupon the witness was cross-examined as follows:

Kenny took the car out Saturday about 10 a. m. and was gone about 45 minutes. When Lamb came for the car at 12, it was not ready for him. When Kenny had the car out he went to get parts for it. If I said on direct examination that the car was out when Lamb came for it at 12, I did not mean it that way. I meant that the car was not ready for him. Kenny is about 5 foot 5. He wears a cap and a dark blue overcoat. He is medium sized. He usually wears a dark blue or dark brown suit, and brown or black shoes. I never noticed whether or not the visor of his cap was broken in front.

Thereupon **Edward R. Deane** was called as a witness for the United States, and being first duly sworn, testified as follows:

I reside in Washington and am inspector of licenses for the District of Columbia. My duties comprise the issuance of automobile license tags. I had such duties during the year 1927. I have examined the records of the District License Bureau with regard to the issuance of automobile license tags for 1927

Thereupon the following occurred:

702 Q. With regard to the Series R for 1927, how high did the numbers run?

Mr. Hoover: We object to that because it is calling for the record, if your Honor please. How can he tell how high they run unless he looks at the record to testify that it is not there.

Q. Are you familiar with the record as to the series R for 1927?

Mr. Hoover: I note an exception.

The Court: Yes.

The witness continued:

I am familiar with the records of my office with regard to the issuance of automobile license tags, series R for the year 1927. No. 1340 was not issued during the year 1927.

Thereupon Government's Exhibit 168 was read in connection with the testimony of the witness Deane.

Thereupon a motion was made to strike out the testimony of the witness Deane on the ground the license number claimed to be erroneous purported to refer to Burr, who was not a juror in the case, and therefore the testimony was immaterial and irrevelant, the motion was overruled and an exception duly noted.

Thereupon it was admitted by counsel for William J. Burns, that William J. Burns was in Washington, D. C. and registered at the Willard Hotel on October 12 and 13, 1927.

Thereupon **John F. Schlotterbeck** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am employed at the Mayflower Hotel as credit manager, and have been so employed for 5 months. I have been at the Mayflower for nearly 3 years. Our records show that Harry F. Sinclair was at the Hotel Mayflower be-
703 tween October 10 and November 2, 1927. He and his party occupied what is known to the hotel as the Presidential suite. It is on the 10th floor, comprising about 11 rooms. It is numbered 1028 to 1040 inclusive.

Thereupon **Frank E. Cunningham** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am the Clerk of the Supreme Court of the District of Columbia. I am familiar with the symbol of the Clerk's office which indicates whether or not a paper is formally on file in this court. (Witness was handed Government's Exhibit 351.) The symbol "filed Nov. 9, 1927, Frank E. Cunningham, Clerk" indicates that paper is on file in this court. (Witness was handed Government's Exhibit 353) The symbol "Filed Nov. 9, 1927, Frank E. Cunningham, Clerk" indicates that that paper is on file in this court. The date, November 9, 1927 indicates the date when they became a part of the files of this court.

Thereupon **William W. Stickney** was called as a witness for the United States, and being first duly sworn, testified as follows:

I am one of the Deputy Clerks of this court. The words "Crim. 43324" on Government's Exhibit 351 look like the handwriting of Adkins, one of the Deputy Clerks of this court. The "United States vs. Harry F. Sinclair and Albert B. Fall" are in the handwriting of Miss Waylin, one of the Deputy Clerks of this office. The words "Crim. 43324" on Government's Exhibit 353 are in Adkins' handwriting. The words "United States v. Harry F. Sinclair and Albert B. Fall are in Miss Waylin's. (The criminal docket in case No. 43324, United States v. Sinclair and Fall, and the original indictment, were produced.)

Thereupon the following occurred:

704 Q. On what date was the indictment filed in that case?

The question was objected to as immaterial, the objection overruled, and an exception duly noted. A. May 27, 1925.

Q. Handed you now is what purports to be the original indictment in case No. 43324, and you are asked whether or not that is the original indictment on file in this court in the case of United States v. Fall and Sinclair?

The same objection was made, the objection overruled, and an exception duly noted.

A. Yes, sir.

Thereupon the indictment in Criminal Case No. 43324 in the Supreme Court of the District of Columbia, the United States v. Harry F. Sinclair and Albert B. Fall, filed May 27, 1925 was offered in evidence, an objection made on the grounds it was immaterial and irrelevant and unnecessarily encumbered the record, the objection overruled and an exception duly noted.

"GOVERNMENT'S EXHIBIT No. 359."

Filed in Open Court May 27, 1925, Morgan H. Beach, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal term, of the April Term, in the Year 1925.

DISTRICT OF COLUMBIA, *ss*:

"The grand jurors for the United States of America, empaneled and sworn in the Supreme Court of the District of Columbia, holding a criminal term at the April Term of said Court in the year 1925, and inquiring for said District of Columbia, upon their oath present, that, on April 30, 1915, Woodrow Wilson, then President of the United States, made and promulgated a certain Executive Order, to wit, an order of the tenor following:

Naval Petroleum Reserve No. 3, Wyoming No. 1.

Order of Withdrawal.

Naval Petroleum Reserve No. 3, Wyoming No. 1.

705 "It is hereby ordered that all lands hereinafter described and heretofore forming a part of Petroleum Reserve No. 8, withdrawn on July 2nd, 1910, from settlement, location, sale, or entry and reserved for classification and in aid of legislation under the authority of the act of Congress approved June 25, 1910, (36 Stat., 847), entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August

24, 1912 (37 Stat., 497), shall hereafter constituted Naval Petroleum Reserve No. 3, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended in so far as it affects these lands.

Sixth Principal Meridian

"T. 38 N., R. 78 W., Sec. 2, S. W. ¼ of N. E. ¼; W. ½, W. ½ of S. E. ¼; Sec. 3, all; Sec. 4, N. E. ¼, N. E. ¼ of N. W. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼; Sec. 9, E. ½ of N. E. ¼, N. E. ¼ of S. E. ¼, Sec. 10 all; Sec. 11, W. ½ of N. E. ¼, W. ½, S. E. ¼; Sec. 14 all; Sec. 15, N. ½, N. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, S. E. ¼; Sec. 22, N. E. ¼, N. E. ¼ of N. W. ¼, E. ½ of S. E. ¼; Sec. 23, all; Sec. 26, N. W. ¼ of N. E. ¼, N. ½ of N. W. ¼.

"T. 39 N., R. 78 W., Sec. 16, N. E. ¼ of S. W. ¼, S. ½ of S. W. ¼, S. W. ¼ of S. E. ¼; Sec. 20, E. ½ of N. E. ¼, S. E. ¼; Sec. 21, all; Sec. 22, S. W. ¼ of N. W. ¼, S. W. ¼; Sec. 27, W. ½ of N. E. ¼, W. ½ S. E. ¼; Sec. 28, all; Sec. 29, E. ½, E. ½ of N. W. ¼, N. ½ of S. W. ¼, S. E. ¼ of S. W. ¼; Sec. 32, N. ½ of N. E. ¼, S. E. ¼ of N. E. ¼; Sec. 33, N. ½, N. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, S. E. ¼; Sec. 34, all; Sec. 35, S. W. ¼ of N. W. ¼, W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼.

WOODROW WILSON,
President.

30 April 1915.

that thereafter, to wit, on June 4, 1920, the Act of Congress entitled "An Act Making Appropriations for the naval service for the fiscal year ending June 30, 1921, and for other purposes," was approved by the President of the United States and said Act provided among other things, for the taking, by the Secretary of the Navy, of possession of all properties within the naval petroleum reserves, including the reserve mentioned in the Executive order above quoted, which was subject to the control and use by the United States, for naval purposes, and on which there were

no pending claims or applications for permits or leases under the provisions of the Act of Congress approved February 25, 1920, entitled "An Act to promote the mining of coal phosphate, oil, oil shale, gas, and sodium on the public domain," and for the conservation, development, use and operation of the same in the discretion of said secretary, directly or by contract, lease or otherwise, and the use, storage, exchange or sale of the oil and gas products thereof, and of all royalty oil from lands in the naval re-
706 serves, for the benefit of the United States; that thereafter to wit, on May 31, 1921, Warren G. Harding, then President of the United States, made an promulgated an Executive order of the following tenor, to wit:

Executive Order.

"Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat. 437,) authoriginz the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directly the Secretary of the Navy to conserve, develop, use and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3, in Wyoming, and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President, but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

The White House, May 31, 1921.

That immediately upon the making and promulgating of said last-mentioned Executive order, Albert B. Fall, who then and thereafter throughout the period of time from the date of said last-mentioned Executive order until March 4, 1923, was Secretary of the Interior of the United States, in pursuance of said Executive order, as such Secretary of the Interior, assumed and undertook the administration and conservation, among other properties, of the property mentioned in said Executive order herein first above set forth; and that in so administering and conserving said property, said Albert B. Fall, by reason of the fact that oil wells were in operation outside of and near to, and along a portion of the northern and northwestern boundaries of said property, was under the necessity of considering whether offset wells, in such number as the practice in such cases reasonably required, should be drilled in said property along said boundaries to prevent the draining of oil from the portions of said property adjoining said boundaries, and said Albert B. Fall having determined that such offset wells should be drilled, it became his lawful duty to procure, by the
707 usual methods of contract and lease, the drilling of such wells in the least number required by the situation then existing and on terms the most advantageous to the United States; and that during the period of time from May 31, 1921, the date of said last-mentioned Executive order, to April 7, 1922, the matter of making such contracts and leases was under consideration by said Albert B. Fall as such Secretary of the Interior, and numerous persons and corporations, competent to do such work and perform such services, then were desirous of entering into such contracts and leases, among others, the Producers' and Refiners' Corporation, the Texas Company, the Texas Pacific Coal and Oil Company, the Aero Oil Corporation, the Midwest Refining Company, the Pioneer Oil and Refining Company, Societe Belgo-Americaine des Petroles du Wyoming, Gerald Hughes, John C. Shaffer, Pat Sullivan and Harry F. Sinclair.

"And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Albert B. Fall and Harry F. Sinclair, continuously from December 31, 1921,

to and including February 9, 1923, at and within said District of Columbia, under the circumstances and conditions herein set forth, then well knowing the premises in this indictment above set forth, unlawfully and feloniously conspired, combined, confederated and agreed together, and with divers other persons, to said grand jurors unknown, to defraud the United States, of and concerning its property and rights, in the manner and for the purposes hereinafter set forth, to wit: Of and concerning the property described in the Executive order first above set forth known as Naval Petroleum Reserve No. 3, Wyoming No. 1; of and concerning oil and gas contained therein; of and concerning its right of conserving the petroleum oil then contained in said property for the future needs of the Navy of the United States; of and concerning its right to have leases and contracts for said property and contracts for the performance of any service in connection with the drilling of any wells upon said property awarded by competitive bidding to such persons and corporations as could and would perform that service upon terms most advantageous to the United States; of and concerning its right to construct, where and when and as the Congress might direct, storage facilities for fuel oil, gasoline, kerosene, lubricating oil, and other petroleum products, by competitive bidding, to the best bidder; of and concerning its right to sell and exchange its royalty crude oil and gas at competitive bidding to the best bidder; of and concerning its right to have the proceeds of any sales thereof paid into the United States Treasury; of and concerning its right to buy fuel oil, gasoline, kerosene, lubricating oil and other petroleum products, for the requirements of the United States, at competitive bidding; and of and concerning its right to have its business and affairs, and particularly said business of making such contracts and leases, transacted by its Secretary of the Interior free from partiality, prejudice and bias, due to his personal and pecuniary interest in the success of any person or corporation in endeavor-
708 ing to obtain and in obtaining such contracts and leases; which said unlawful and felonious conspiracy, combination, confederation and agreement then and there was to be accomplished by the means and in the manner following, to wit:

"Instead of ascertaining which of said persons and corporations could and would undertake the drilling of such offset wells as were reasonably necessary for the conversation of said property upon terms most advantageous to the United States, and instead of advertising for and calling for and permitting competitive proposals and bids by prospective contractors and lessees for the performance of such service, and for the leasing of such lands and the oil and gas contained therein, and for the selling of said royalty oils and gas for cash, and for the exchange of said royalty oil and gas for fuel oil, gasoline, kerosene, lubricating oil and other petroleum products, and for the construction of said storage facilities, and for the purchasing of fuel oil, gasoline, kerosene, lubricating oil and other petroleum products for the requirements of the United States Navy, and instead of depositing the proceeds of any sales of royalty crude oil and gas in the Treasury of the United States, the said Albert B. Fall, upon the request and at the solicitation of the said Harry F. Sinclair, according to said unlawful and felonious conspiracy, combination, conferation and agreement, fraudulently was to award to the said Harry F. Sinclair, or to a corporation to be organized, owned and controlled by him, to wit—the Mammoth Oil Company, hereinafter called the Lessee, a contract and lease, granting and leasing to the Lessee the exclusive right and privilege to drill for, mine, extract, remove and dispose of all the oil and gas deposits in or under the tracts of land hereinbefore described, for a period of twenty years, and so long thereafter as oil or gas is produced in paying quantities from said lands; and authorizing the drilling of an excessive number of oil and gas wells in all parts of said property, without reference to the number of such wells then reasonably required; and agreeing to sell, and selling to said Lessee, all the royalty crude oil accruing to the United States under said lease and contract; and agreeing to accept therefor not cash but certain oil exchange credit certificates, evidencing the amount of crude royalty oil of the United States delivered to the Lessee, and the value thereof as fixed under the terms of said lease and contract, the same to be redeemed by the maker upon presentation, either as a credit upon or for the extinguishment of any obligation to the maker thereof, for steel tank stor-

age to be constructed under said lease and contract so to be made, or for fuel oil to be delivered by the Lessee to be stored therein, or for gasoline, kerosene, lubricating oils and other petroleum products for the requirements of the United States Navy; and agreeing that a portion of said certificates should be redeemed by the Lessee in cash if the United States should on or before July 1, 1923, notify the Lessee in writing of its election to receive payment in cash for any portion of said certificates issued for royalty oil which might be run during the calendar year 1924, and that the United States should have a similar option
709 to receive payment in cash in each calendar year thereafter, by giving similar notice on or before July 1st of the next preceding year; which said lease and contracts were to be entered into without advertising for, calling for, or permitting competitive proposals and bidding, upon terms enormously profitable to the said Lessees, at all events, and without reference to or inquiry concerning the ability of willingness of any of the other persons or corporations above named and referred to to compete for the performance of said service, for the award of said lease and contract, for the construction of said steel tankage, for the filling of same with fuel oil, for the purchase from the United States of said royalty oil, and for the sale to the United States of fuel oil, gasoline, kerosene, lubricating oils and other petroleum products for the requirements of the United States Navy, and the said conspiracy, combination, confederation and agreement were entered into in a crafty, deceitful, secret and surreptitious manner, involving the making by the said Albert B. Fall of false representations and statements to such other persons and corporations, to the effect that the leasing of said Naval Reserve, and the making of leases and contracts for the drilling of such offset wells, or of any wells upon said property, were not being contemplated by the said Albert B. Fall or by the Department of the Interior, or by the Government of the United States, and to the effect that when the said Albert B. Fall and said Department of the Interior and the Government of the United States were ready to award such leases and contracts all such other persons and corporations would be given notice of that fact and accorded an opportunity to make proposals and bids for leases of the

said property and for contracts for the performance of the said service and furnishing of said labor and supplies, whereby such other persons and corporations were fraudulently prevented from competing with the said Harry F. Sinclair and the said Mammoth Oil Company for the obtaining of such leases and contracts, and the United States was thereby deprived of the benefits of such competition and defrauded of its property useful to its Navy, and essential to the Government of the United States in time of war, and of its valuable rights and pecuniary interests hereinbefore recited.

"Instead of keeping his mind and judgment free from partiality, bias and prejudice in favor of the said Harry F. Sinclair and the said Mammoth Oil Company, and against the said other persons and corporations desirous of securing said leases and contracts in competition with the said Harry F. Sinclair and the Mammoth Oil Company, and his judgment upon matters in that connection, involving the said property and pecuniary interests and rights of the United States as aforesaid, free from error detrimental to the United States, the said Albert B. Fall, according to said unlawful and felonious conspiracy, combination, confederation and agreement, corruptly, secretly and surreptitiously was to accept from the said Harry F. Sinclair and the Mammoth Oil Company, and they were corruptly, secretly and surreptitiously to give to said Albert B. Fall large amounts of United States Liberty Loan bonds as loans and gifts, whereby the said United States was to be deprived of its property, pecuniary interests, and
710 rights, and the benefit of such competition, as aforesaid, and of the honest, unbiased, impartial and unprejudiced service of said Albert B. Fall, as Secretary of the Interior, touching the matters aforesaid.

Overt Acts.

"And the grand jurors aforesaid, upon their oath aforesaid, to further present, that to effect the object of said unlawful and felonious conspiracy, combination, confederation and agreement, said Albert B. Fall and Harry F. Sinclair, at the several times and places in that behalf hereinafter mentioned in connection with their names, did do, among many others, certain acts; that is to say:

"1. Said Harry F. Sinclair, on February 3, 1922, at the City of Washington, in said District of Columbia, prepared and delivered to said Albert B. Fall a certain letter, to wit, a letter of the tenor following:

Washington, D. C., February 3, 1922.

The Secretary of the Interior,
Washington, D. C.

SIR:

Being experienced in the production of oil and its manufacture into various by-products, and in its transportation and marketing, my attention has been called to what is known as the Teapot Dome in the State of Wyoming, this area having been reserved by the President for the use of the Navy. I now address you on this subject, as I understand that it has been found necessary by the department to make some contract with reference to naval reserve No. 2, in California, for the reason that said reserve was being drained.

This condition, in my opinion, exists in the Teapot Dome in the Wyoming field; therefore, I submit for your consideration, as merely tentative, the following bases upon which I would agree to undertake the development of this reserve No. 3.

1. I would want a contract with the Government by the terms of which I would be authorized to take out all of the oil in this reserve without reference to the length of time which might be required to accomplish that end.

2. I will be willing to pay a reasonable royalty, the amount of which will have to be agreed upon by the Government and me. I suggest the graduated scale of royalty, based upon the size of the wells, will be more satisfactory to all parties.

3. It will be my purpose to develop the property as rapidly as conditions will warrant and as circum-
711 stances from time to time may demand.

4. I am familiar with the fact that at the present time the transportation facilities are inadequate to handle the present production in the vicinity of this reserve.

5. In the first instance, I will undertake to construct and build sufficient steel storage to take care of the production until such time as it can be determined whether or not the volume of production is sufficient to warrant the building of a pipe line to connect the Wyoming and other far western fields with the markets of the world.

The building of this storage and the construction of this pipe line, which would be approximately 1,000 miles in length, would require an expenditure of a great many millions of dollars.

6. I will undertake to furnish for the use of the Navy along the Atlantic Coast and the north coast of the Gulf of Mexico fuel oil in exchange for that portion of the oil that may be produced for the Navy in accordance with the terms of the contract. This exchange of oil would involve the necessity of building storage on the Atlantic Coast and the northern coast of the Gulf of Mexico, sufficient to take care of the Navy's needs. I would also undertake to supply this steel tank storage.

7. I will further undertake to quiet all outstanding claimants' titles on this reserve No. 3, thereby enabling the Government to make a contract now which will be free from controversy. These claimants have made some development—through themselves or through those under whom they claim—have drilled some wells to the depth to produce some oil, and have expended large sums of money in their development efforts. It is my understanding that existing outstanding claims have as great merit as some of those by reason of which the department has recognized equities and granted rights.

8. I desire to suggest that the leasing of this area by auction would probably result in small areas being awarded to a great many different interest, with the result that the congestion now existing would be much increased. I also suggest for your consideration that you would have from the auction method a multiplicity of accounts and a great number of tenants to deal with which would involve great additional expense.

To justify this large investment for the building of steel tankage for the storage of the excess production, and the large investment required for the construction of pipe

lines to enable this oil to reach the consuming markets, in my opinion this reserve should be contracted to one interest.

712 9. The recent drilling and discovery of oil in what is known as the Saddle, lying between the naval reserve No. 3 and the Salt Creek field, is conclusive evidence of the fact that the Teapot Dome is not a sealed dome, and has been and is now being drained.

The plan I propose will insure the Navy against loss of its oil by drainage, and will insure the navy having its oil in steel storage, above the ground, at such points as will make it at all times instantly available for the Navy's use.

In conclusion, I respectfully suggest that it will be vastly more valuable to the Navy Department to have its oil in secure, steel storage, which does not leak, and which is above ground, and which will be located by the Navy at such points as it may direct, and therefore always instantly available, than to have the oil under ground where it is subject to being drained, and perhaps totally lost to the Navy, and far remote from where it could be used.

Very respectfully,
H. F. SINCLAIR.

2. Said Harry F. Sinclair, on March 11, 1922, at said City of Washington, in said District of Columbia, prepared and delivered to said Albert B. Fall a certain other letter, to-wit, a letter of the tenor following:

Application for Lease

Washington, D. C., March 11, 1922.

To the Honorable,
The Secretary of the Interior.

Now comes the undersigned Mammoth Oil Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office in the State of Delaware at Wilmington, Delaware, and hereby respectfully makes application for an Oil and Gas Lease covering that part of the public lands of the United States designated in Executive Order of withdrawal issued by the President of the United States on April 30, 1915, creating

Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres more or less, situated in Natrona County, State of Wyoming, and described as follows, to-wit:

Sixth Principal Meridian.

T. 38 N., R. 78 W., Sec. 2, SW. ¼ of NE. ¼, W. ½, W. ½ of SE. ¼; Sec. 3, all, Sec. 4, NE. ¼, NE. ¼ of NW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼; Sec. 9, E. ½ of NE. ¼, NE. ¼ of SE. ¼; Sec. 10, all; Sec. 11, W. ½ of NE. ¼, W. ½, SE. ¼; Sec. 14, all; Sec. 15, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼; Sec. 22, NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE. ¼; Sec. 23, all; Sec. 26, NW. ¼ of NE. ¼, N. ½ of NW. ¼;

713 T. 39 N., R. 78 W., Sec. 20, E. ½ of NE. ¼, SE. ¼; Sec. 21, all; Sec. 22, SW. ¼ of NW. ¼, SW. ¼; Sec. 27, W. ½ of NE. ¼, W. ½, SE. ¼; Sec. 28, all; Sec. 29, E. ½, E. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼; Sec. 32, N. ½ of NE. ¼, SE. ¼ of NE. ¼; Sec. 33, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼; Sec. 34, all; Sec. 35, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼.

The undersigned requests that such lease be granted under form of Contract of Lease which is herewith submitted in triplicate with this application.

The undersigned herewith tenders and files a quit-claim deed executed by it, quit-claiming and relinquishing to the Government of the United States all of its rights, title and interest claimed or possessed in or to any of the lands in this instrument described.

To certified copies of the Certificate of Incorporation of the Corporation are filed herewith, and there is also attached hereto certified copy of the resolutions of the Board of Directors, authorizing the proper officers of this Corporation to negotiate for, execute and deliver such lease, if the same be granted, and to furnish such bond in con-

nection therewith as may be required upon the granting thereof by the Government of the United States.

Respectfully submitted,

(Seal of Mammoth Oil Company.)

MAMMOTH OIL COMPANY,
By H. P. SINCLAIR,
President.

Attest:
N. D. PARHAM,
Assistant Secretary.

Approved:
ALBERT B. FALL,
Secy.

3. Said Albert B. Fall on March 30, 1922, at said City of Washington, in said District of Columbia, signed his name, to wit, Albert B. Fall, to a certain letter, to wit, to a letter of the tenor following:

Department of the Interior

Washington, March 30, 1922.

Mr. Joseph W. Clarke,
Attorney at Law,
Leadville, Colorado.

Dear Mr. Clarke:

I regret the delay in answering your letter of February 18, making inquiry with reference to the leasing of naval petroleum reserves, and requesting copies of regulations applicable thereto. Your letter was mislaid and
714 only called to my attention by my assistants yesterday.

The naval petroleum reserves in California are being handled entirely by this Department and some offset leases have been made thereupon under a general policy, but only with reference to specific cases, i.e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or per-

mits for offset wells to protect the Government property against encroachment of private owners.

There are no specific regulations applicable to the leasing of such lands.

Respectfully,
(Sgd.) ALBERT B. FALL,
Secretary.

4. Said Albert B. Fall, on March 20, 1922, at said City of Washington, in said District of Columbia, stated orally, to one Frank L. Kistler, who then and there, in behalf of said Producers' and Refiners' Corporation, had inquired of said Albert B. Fall, as such Secretary of the Interior, as to the possibility of said corporation securing a contract and lease of the kind herein above mentioned, for the purposes hereinabove set forth, upon the property herein above described, that he the said Albert B. Fall, as such Secretary of the Interior, had not yet determined upon any policy as to such contracts and leases, and that, when such policy should be so determined upon, he would advise said Frank E. Kistler as to its adoption and character, so as to enable said corporation to compete for securing such contract and lease.

5. On April 7, 1922, the said Albert B. Fall, as such Secretary of the Interior, undertaking to act and acting for the United States pursuant to the said Executive order of May 31, 1921, caused to be executed on the part of the United States, by himself as such Secretary of the Interior, and by the Secretary of the Navy, and the said Harry F. Sinclair, as President of the said Mammoth Oil Company, and acting for the said Mammoth Oil Company, at the said City of Washington, in the said District of Columbia, caused to be executed on the part of the Mammoth Oil Company, a certain lease between the United States and the said Mammoth Oil Company, leasing the property described in the Executive order first above set forth and providing for the extraction of the petroleum oil and gas from said property, and the construction of certain steel tank storage and filling thereof with fuel oil, and for gasoline, kerosene, lubricating oils and other petroleum products for the requirements of the Navy, the same to be paid

for by the redemption of certain oil certificates, as hereinbefore referred to, and particularly as more fully
715 set out in said lease which is so voluminous that it is not practicable to set the same forth herein.

6. The said Harry F. Sinclair, on or about the 8th day of May, 1922, delivered, or caused to be delivered, to the said Albert B. Fall, and the said Albert B. Fall, received, or caused to be received, from him, a large amount of bonds of the United States, known as First Liberty Loan three and one-half per cent bonds, of the par value of $230,500.

7. On February 9, 1923, the said Albert B. Fall, undertaking to act and acting on behalf of the United States pursuant to said Executive order of May 31, 1921, caused to be executed by himself and the Secretary of the Navy, and the said Harry F. Sinclair, on behalf of the Mammoth Oil Company, caused to be executed by one J. W. Zevely, its Vice President, and one N. D. Parham, its Assistant Secretary, an agreement between the United States of America and the Mammoth Oil Company, supplemental to the said lease of April 7, 1922, for the construction of certain steel tank storage and facilities, designated in said supplemental agreement as Project "A," Project "B," Project "C," and Project "D," and for the filling of said storage with fuel oil and other petroleum products, the same to be paid for by an exchange therefor of royalty crude oil certificates representing the amount and value of royalty crude oil accruing to the United States under said lease of April 7, 1922, as more fully set out in said supplemental agreement, which supplemental agreement is so voluminous that it is not practicable to set the same forth herein.

Conclusion

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, continuously through out the period of time aforesaid, at the place aforesaid, and in manner and form aforesaid, unlawfully and feloniously did conspire to defraud the United States, and did do acts to effect the object of the conspiracy; Against the peace and dignity of the United States, and contrary to

the form of the statute of the same in such case made and provided.

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel of the United States.

Criminal No. 43324. In the Supreme Court of the District of Columbia. Arraigned. Plea Not Guilty
716 Each. United States v. Harry F. Sinclair and Albert B. Fall. Indictment. Violation Sec. 37 Penal Code. Conspiracy to defraud the United States. A true bill. Harry C. Stewart, Foreman. Filed in open court May —, 1925. ——— ———, Clerk. Filed in Open Court May 27, 1926. Morgan H. Beach, Clerk."

Q. State whether or not to that indictment, on December 23, 1926, each of the defendants named therein were arraigned and entered a plea of not guilty.

The same objection was made, the objection overruled, and an exception duly noted.

A. December 23, 1926, each were arraigned and pleaded not guilty.

Thereupon **Howard Kenny** was called as a witness for the United States, and being first duly sworn, testified as follows:

I live at 1611 M Street, N. W., and am employed at George R. Aiken's garage and automobile repair place,
1743 Rhode Island Avenue. I was employed there
717 during the month of October, 1927 I saw an Oakland Roadster belonging to H. R. Lamb at Aiken's place. About 10 a. m. I took that car out the alley to P Street, and up P to 14th, where I stopped. I came back down 15th, down to 17th and the shop. About 10:45 a. m. I took it straight up from 17th to Swan, and out Swan to 14th. I returned the same day.

Thereupon **John R. Fitzpatrick** was called as a witness for the United States, and being first duly sworn, testified as follows:

I reside at 1344 Quincy Street, N. W. I am Secretary to Mr. Justice Siddons, and have been for over a year.

I know Thomas Lodge, an attorney. I saw him on November 4, 1927 in the chambers of Mr. Justice Siddons. (Witness was handed Government's Exhibits 352 and 353.) He handed those two affidavits to Mr. Justice Siddons, who thereafter handed them back to Mr. Lodge, who then handed them to me. I first put them in a place in the office and kept them under my personal supervision. Thereafter I took them and handed them to Mr. Justice Siddons. I never brought them to the Clerk's office, or caused them to be sent to the Clerk's office. The last I saw of them they were in the possession of Mr. Cunningham, the Clerk of this court, who was then in our office. Mr. Justice Siddons handed them to Mr. Cunningham.

Thereupon the witness was cross-examined as follows:

When Lodge handed these two affidavits to the Justice, they were folded. Before handing them to the Justice he did not read them to him. Justice Siddons didn't read them while he had them in his hands before handing them to him. When Mr. Lodge handed those affidavits to Justice Siddons he said that he represented the Burns people. He used the name "William J. Burns," but whether he used that as the name of an individual or part of
718 the name of the Agency I am not now clear. He stated that he presented—I use the word "presented"—I do not attempt to quote the exact words; he may not have used it—the affidavits on behalf of the Burns people. He repeated that several times, using the phrase "Burns people," and using the phrase "William J. Burns," and also "The International Detective Agency." He stated that they were for the information of the Justice. To the best of my recollection he did not also state that he felt it his duty as a member of the bar of the court to present these affidavits to the Justice. I cannot tell whether he used the name "W. J. Burns" as a corporate or an individual name. The whole interview was a matter of several minutes only, and the affidavits were handed back to Mr. Lodge shortly after he spoke to the Justice. I was present all the time the Justice had the affidavits after Lodge handed them to him, and before he handed them back to Lodge. The Justice didn't have them again until after Lodge handed them to me. I placed them in

my private office at about 10 o'clock on November 4th. They remained there until about 4:30 or 5 that afternoon, when I took them in my possession again. I turned them over to Justice Siddons, in his private office. Major Gordon and Senator Pomerene were present. I saw one of them in possession of the affidavits later in that room. Justice Siddons did not read the affidavits at that time. Major Gordon and Senator Pomerene left the chambers about 5 o'clock and one of them took the affidavits with him. I next saw the affidavits at 12:00 noon the following day, November 5, in my office. Mr. Goldstein, Major Gordon's secretary, handed them to me.

The Government thereupon rested its case.

Thereupon a motion was made by each respondent to strike out all of the testimony of the witness Frank
719 M. Dent as being irrelevant, immaterial and incompetent, the motion denied and an exception duly noted.

Thereupon a motion was made by each respondent to strike out all of the so-called original reports of the Burns agents, comprising Government's Exhibits 192 to 309, inclusive, 310, 310-a, 310-b, 311, 311-a, 311-b, 313, 313-a, 313-b, 314, 315 and 316 on the grounds they were never received by the Respondents Sinclair, Day and W. J. Burns, and not received by respondent W. Sherman Burns, until October 31, 1927, the motion denied and an exception duly noted.

Thereupon a motion was made by each respondent to strike out the testimony of the witnesses Mrs. Bailey and Miss Heaton in regard to the conversation they were said to have had with Juror Kidwell in the anteroom of the court house in regard to keeping out of trouble on the ground that the incident which gave use to the actions and activities of Kidwell, and the conversation and the remark he made to his fellow jurors, was in no wise shown to have been connected with any of the respondents, the motion denied and an exception duly noted.

Thereupon a motion was made by each respondent to strike out all of the testimony of the witness Grenfell with regard to contradiction of the reports, all the testimony

of the witness Mrs. Bailey, tending to prove the falsity of reports relating to her, all the testimony of the witness Edward J. Kidwell, Jr., which tends to disprove the accuracy of the reports as being irrelevant, immaterial and incompetent, the motion denied and an exception duly noted.

Thereupon a motion was made by each respondent to strike out all of the testimony of the witness Burr that has to do with a man's driving an automobile out into the vicinity of 16th and Buchanan Streets as being irrelevant and immaterial as Burr was in no way connected
720 with the case and as being outside the charge in the petition, and the disposition of the motion postponed until motions with regard to McMullin's testimony were presented.

Thereupon a motion was made by each respondent to strike out all of the testimony of the witness McMullin concerning the alleged false reports of October 19, 20, and 22nd; all of the conversation testified to by the witness as having occurred between the witness and Mr. Ruddy respecting directions alleged to have been given by Mr. Ruddy to the witness to put in false reports and to make the false affidavit, and especially the conversation with Mr. Ruddy on November 3rd, in which the witness McMullin stated that Ruddy said that W. J. Burns had directed him to procure this affidavit; and the conversations between the witness McMullin and Mr. Welchans on the grounds of lack of proof of agency, hearsay, and even assuming such directions to be true, as being outside the scope of the employment, the evidence allowed to remain for whatever value it might ultimately be decided to have, and an exception duly noted.

Thereupon a motion was made by each respondent to strike out the testimony of the witness Glasscock with respect to his doing the things which were reported in the reports of McMullin which McMullin testified were false, the same action taken and an exception duly noted.

Thereupon a motion was made by each respondent on behalf of the Burns respondents to strike out the testimony of Mr. Dove, of Mr. Britton Brown, of Mrs. Rawzee, of

Paul S. Anderson, of Donald Woodward regarding an independent investigation by the respondent Day respecting the property of Juror Kern on the grounds it in no way affected the respondents Burns, the same action taken and an exception duly noted.

721 Thereupon the motion by each respondent to strike out the testimony of the witnesses Akers and King was disposed of in the same way and an exception duly noted.

Thereupon a motion was made by each respondent that the rule upon the respondents be discharged and the petition dismissed on the grounds already stated in the motion to dismiss when the sufficiency of the petition was questioned; and on the further grounds that none of the allegations of the purposes or designs alleged in the petition were at all supported by any evidence introduced by the Government; on the grounds that there was not a scintilla of evidence showing that anybody, proceeding from any of the respondents, even came in contact with a juror or ever approached a juror, or ever conversed with a juror, or ever sought to approach or converse with a juror, or that a single juror was ever conscious of being shadowed; on the grounds that no act of the respondents obstructed, or directly tended to obstruct the administration of justice; on the grounds that the Government had undertaken to charge the respondents with a conspiracy to commit a criminal contempt and therefore there was a variance; on the grounds that shadowing per se is not a violation of the law and therefore not a contempt of court; on the grounds that the submission of the McMullin affidavit was not contempt of court as there was on trial then pending and nothing was asked to be done with it; on the ground that this prosecution is based on Section 135 of the Penal Code, the motion was overruled and an exception duly noted by each respondent.

722 Thereupon the motion made to discharge the rule and dismiss the petition as to Sheldon Clark was granted.

Thereupon the following occurred:

Mr. Douglas: If your Honor please, I have two motions. The first is with reference to the respondent Vietsch, and

the other with reference to the respondent William J. Burns. Of course they are separate motions based upon a separate record, but if your Honor has no objection to me arguing one and then the other without taking them up separately, I will do so.

The Court: Let me interrupt you. You have already indicated to the Court—you previously had presented the motion.

Mr. Douglas: Yes.

The Court: And I indicated to you then that I did not care to have that motion presented at that time.

Mr. Douglas: Yes, sir.

The Court: I do not know whether you filed separate motions for the respondent Vietsch and for the other respondents in whose behalf the motion was then presented. But whether so or not, I still remain of the opinion that these motions of yours should await the period of time when I am told that the case is at an end so far as the presentation by either side is concerned.

Thereupon the respondents introduced and offered the following evidence:

"RESPONDENTS' EXHIBIT No. 18."

723 "THE STATE OF OHIO
Cuyahoga County, ss:

In the Court of Common Pleas.

THE STATE OF OHIO, Plaintiff,

vs.

WM. MCMULLEN, Defendant.

Forgery with Court.

March 16th, 1920.

This day came the jurors of the grand jury, having found and now present to the court, by and through their foreman 'Bills of indictment' against the following named persons, for the following indicated crimes and offences, each in-

dorsed by said foreman 'A True Bill,' and by him signed as foreman as aforesaid, enumerated as follows, to-wit:

18266. The State of Ohio vs. Wm. McMullen, alias Frederick McMullen, Indictment for Forgery with Count. Journal 30, page 356.

March 17th, 1920.

Now comes the prosecuting attorney on behalf of the State of Ohio, and the defendant being brought into court in custody of the sheriff, and arraigned upon said indictment, for plea thereto, saith he is not guilty; and puts himself upon the country, and the prosecuting attorney doth the like. Bond is fixed in the sum of $4000.00 And it appearing that the defendant is in indigent circumstances, and unable to employ counsel, the court, at his request, appoints Andrew Kovachy, Esq., as counsel for his defense. Journal 30, page 358.

March 23rd, 1920.

Now comes the prosecuting attorney on behalf of the State of Ohio, the defendant being brought into court in custody of the sheriff; thereupon the said defendant retracts his plea of not guilty heretofore entered, and for plea to said indictment, saith he is guilty; thereupon, it is ordered and adjudged by the court, that the said defendant William Mullen alias Frederick McMullen, be imprisoned and confined in the Ohio State Penitentiary at Columbus, Ohio, for an indeterminate period and that he pay the costs of this prosecution for which execution is awarded. Journal 30, page 275.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, George Wallace, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by
724 the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records of the Proceedings of the Court of Common Pleas, within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the

original record and that the same is a correct transcript thereof.

In testimony whereof, I do hereby subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said County this 21st day of January A. D. 1928.

(Signed.) GEORGE WALLACE,
[Seal.] *Clerk.*

I, Homer G. Powell, Chief Justice, presiding Judge of the Court of Common Pleas, within and for the Eleventh Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that George Wallace was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, with and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original record is required to be kept by the Laws of the State of Ohio, and authorized by the Laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of Law.

Signed by me and dated at Cleveland, Cuyahoga County, Ohio, this 21st day of January, A. D. 1928.

(Signed.) HOMER G. POWELL,
Judge as aforesaid.

I, George Wallace, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, do hereby certify that Homer G. Powell, Chief Justice, was at the date of the foregoing certificate the duly elected, qualified and acting President Judge of the Court of Common Pleas of Cuyahoga County.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 21st day of January A. D. 1928.

(Signed.) GEORGE WALLACE,
Clerk.

(On the back of the above document is the following:) "Cuyahoga Common Pleas. The State of Ohio vs. Wm. McMullen. Copy of Record."

725 Thereupon S. M. Current was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live at 1238 Neal Avenue, Columbus, Ohio. I am identification officer and compiler of records of the Ohio State Penitentiary at Columbus. I have held that office for 4 years, and have been with the penitentiary for 13 years. I know William J. McMullin. I recognize him as the man who had been in the penitentiary in Ohio. He remained within the prison walls of the Ohio Penitentiary about 9 months before he was transferred to the brick plant in September, 1920. The brick yard is just the same as a prison, except there are no stone walls around it. There is a wire fence about 8 feet high, and it is guarded the same. It is maintained by the penitentiary and has a stockade. I am experienced in the study of fingerprints. It is my business and that is the position I occupy in the penitentiary. I study three or four hundred sets of prints a month. It is the most infallible means of identification that I know of. (Witness was handed Respondents' Exhibit 15.) Respondents' Exhibit 15 is from the records of the Ohio Penitentiary in the case of William J. McMullin. I was in court when he testified that that was his signature and that the fingerprint over the signature was probably his. (Witness was handed a paper entitled "Application for Employment," an application purporting to be an application of William J. McMullin dated July 28, 1925, for employment in the Burns Agency, on which are certain fingerprints, and marked Respondents' Exhibit 15 for identification.)

Thereupon Respondent's Exhibit 15 for identification was offered in evidence to impeach the credibility of McMullin and to show his bias, it was objected to as irrelevant, the objection sustained and an exception duly noted, and

726 the Exhibit is attached hereto.

Thereupon the following occurred:

Q. I again show you the Ohio Penitentiary record of McMullin, marked Respondents' Exhibit 15 for identification, which contains the signature and the fingerprints, and I show you at the same time what purports to be an application for employment to the Burns Agency in the name

of William James McMullin, dated July 28, 1925, which has some fingerprints upon it, and I ask you to tell the Court whether or not the fingerprints on those two papers are identical and therefore the fingerprints of the same individual.

The question was objected to, the objection sustained, and an exception duly noted.

Thereupon Respondents' Exhibit 13 for identification, the application for employment to the Burns Agency, dated September 30, 1927, in the name of William V. Long, and identified by the witness McMullin, was offered in evidence, for the purpose of impeaching the credibility of McMullin, and showing his bias prejudice and hostility against the Burns people; it was objected to, the objection sustained and an exception duly noted, and the exhibit is attached hereto.

Thereupon the war record of William J. McMullin was offered in evidence for the purpose of impeaching his credibility with particular reference to the statements he made that he had not been dishonorably discharged from the Army; also for the purpose of contradicting his statement that he was not a deserter from the United States Army, and generally for the purpose of proving a record of evil life, which this record discloses, it was objected to on the grounds of irrelevancy and incompetency, but not as to form, the objection sustained and an exception duly
727 noted. The paper was marked "Respondents' Exhibit 19 for identification and is as follows:

"War Department, Washington.

November 25, 1927.

"AG 201, McMullin, William J. (Enl.)

Honorable Peyton Gordon,
United States Attorney,
Washington, D. C.

Dear Sir:

Referring to telephonic request made by Mr. Burkinshaw of the United States District Attorney's office to Major

Thompson of the War Department for the military history of William J. McMullin, the following information is furnished.

William J. McMullin, Army aerial number R-1, 079,986, enlisted July 21, 1917, for Aviation Section, Signal Corps, giving his age as 22 years and 4 months, place of birth as Philadelphia, Pa., and residence as 6239 Rising Sun Avenue, Philadelphia, Pa., and was discharged October 1, 1917, at school of Military Aeronautics, Ohio State University, Columbus, Ohio, by authority of the Secretary of War, by reason of services being no longer required and because of his failure in his examinations and his extremely poor conduct, a private, with character poor; enlisted January 9, 1918, for Aviation Section, Signal Corps, giving his age as 20 years and 9 months, place of birth as Philadelphia, Pa., and residence as 6239 Rising Sun Avenue, Philadelphia, Pa., and was honorably discharged March 31, 1919, for the purpose of enlisting, a private, with character good; reenlisted April 1, 1919, at Kelly Field, Texas, giving his age as 22 years, place of birth as Philadelphia, Pa., and residence as 6239 Rising Sun Avenue, Philadelphia, Pa., and deserted July 30, 1919, a private, 144th Aero Squadron. On April 3, 1920, he was discharged from the Army by reason of desertion and sentence to imprisonment by civil court, report having been received that he was sentenced March 23, 1920, in the criminal court of Cleveland, Ohio, to a term of from one to seven years in the Ohio State Penitentiary, upon conviction of forgery. His application for adjusted compensation shows date of birth as April 9, 1897. The personal description of this man is recorded as follows: Eyes, blue; hair, brown; complexion, medium fair; height, 5 feet, 6 inches; weight, 149 1/2 pounds; occupation, student.

Sincerely yours,

DWIGHT F. DAVIS,
Secretary of War."

728 Thereupon **William V. Long** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I reside at 304 Carteret Street, Camden, New Jersey. I am supervisor of insurance, the Indemnity Exchange, Phila-

delphia. I was in court when William J. McMullin was on the stand. I have known him just one year. I have roomed at his house and worked with him at the same place of employment. I got to know him well and I know quite a few other people who know him. I have heard his reputation for truth and veracity discussed and I know what it is. It is bad. I would not believe him on his oath.

Thereupon the following occurred:

Mr. Morgan: In order to save time, your Honor, I offer to prove by this witness three incidents. Your Honor can rule upon them for the purposes of the record. The first one is that in the spring of 1927 McMullin proposed to this witness that he go with him (McMullin) to the City of Milborn, Pennsylvania, and there produce false charges against one magistrate or squire in that town, or, to use the language of the street, to frame him in a certain case, and that this witness refused.

The second incident is that later in the year this witness was riding in Mr. McMullin's automobile in which Mr. and Mrs. McMullin were riding, the witness riding on the back street. In front of them an accident occurred between two street cars of the Philadelphia Rapid Transit Company, in which neither Mr. McMullin, Mrs. McMullin nor Long, the witness were. That immediately McMullin stopped his car and went to the scene of the accident and obtained slips that persons who are injured in accidents usually get; that he asked Mr. Long to do the same
729 thing and Mr. Long refused; that thereupon Mr. McMullin and his wife went to a physician and there obtained a certificate of injury; that he later made claim upon the railway company for damages, and we intend to prove, I might say along with another witness, in order to connect it up, that he actually obtained $75 from the street railway company on account of an alleged injury.

The third incident is: That while Mr. Long was employed in the position he now occupies, that Mr. McMullin came to him and suggested that, inasmuch as he was going to be on a jury, if he had any cases coming before him, he, McMullin would be glad to either vote in his favor or secure other jurors to do so in those cases.

That is the proffer we are now making to your Honor.

Objection was made, sustained, and exception duly noted.

Q. Mr. Long, what consent, if any, did Mr. McMullin have to use your name in applying for work at the Burns Detective Agency in September, 1927?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Did you know that Mr. McMullin had used your name in such manner?

The question was objected to, the objection sustained, and an exception duly noted.

Q. When did you learn for the first time that McMullin had used your name in applying for work at the Burns Detective Agency?

The question was objected to, the objection sustained, and an exception duly noted, and the witness continued:

I know V. C. King and A. Lincoln Tell. I know of
730 Senator Edge.

Q. Were you ever in the employ of the New Jersey State police?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Mr. Long, were you ever employed by the London Guaranty Accident Company, Limited?

Mr. Morgan: The object of that is this:

That on the application of Mr. McMullin, alias Long, he gives references to certain people of whom the company was directed to inquire as to his fitness, character, reputation and so forth. The persons about whom I interrogated the witness, for instance, Senator Edge, Mr. Till and Mr. King, were persons given by McMullin in his application. It now appears from the witness that those persons were known to Mr. Long. I asked him if he was employed by the New Jersey State Police, because Mr. McMullin gave them as references. The same applies to the London Guaranty Accident Insurance Company.

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Wright: I want to make a further proffer on behalf of Mr. Day, and rather than take the time to put the individual questions, which would require much longer than to make a proffer. I hold in my hand the application which McMullin made to the Burns Agency under date of September 30, 1927, in which he impersonated the witness who is now on the stand. I offer to proceed in detail through this application, so far as it discloses the identity of the applicant, or pretends to, with reference to the activities in which the application shows that he was engaged, the extent of his travels and his references, to show that
731 as a matter of fact that each of those things refers to *to* this witness now on the stand. The ground of my offer to do the same thing is because of my claim that on the direct examination of Mr. McMullin the District Attorney, for some reason unknown to me, undertook to deal in part with the past life of McMullin and he opened this subject for investigation upon our part.

Mr. Douglass: Before your Honor passes on Judge Wright's offer I wish, on behalf of the Burns respondents, to reoffer the application of September 30, 1927, which has already been marked as Respondents' Exhibit for Identification No. 13 for the additional purpose and on the additional ground, suggested by Mr. Hoover, namely, that we wish to show, and we wish to lay the foundation by that proof, that the Burns Agency did not take this man on knowing his character or for any purpose of using the man in an illegitimate way after they employed him, but that in good faith they exercised not only ordinary care, but due and proper, almost extraordinary diligence, to find out what manner of man he was. We reoffer the evidence, stated to your Honor by Mr. Morgan, to be obtained from Mr. Long, that he not only used the references that constituted a record of the character of Mr. Long, which was enviable, and that he therefore not only falsely impersonated Mr. Long by forging his name to the application, but that he undertook to appropriate to himself the record and character of Mr. Long as given upon the back of that application. Then we propose to follow that up with the testimony of Mr. Ruddy and others that they took these references that this man McMullin gave, by the name of William V. Long, and made inquiries with regard to them, in the shape of letters,

telephone communications and other inquiries, that they did so with reference to William V. Long, and that the responses to all of these references, which were Mr. William
732 V. Long's record and character, were answered favorably, that thereupon they were deceived, after using the diligence that I have described to your Honor, and that in that way this man entered, like a sheep in wolf's clothing, into the fold of the Burns Agency.

Objection was made to both offers, the objection sustained and an exception duly noted.

Thereupon **Harry F. Stahl** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live in Haddonfield, New Jersey, and I am a Pennsylvania licensed state detective. My place of business is 1328 Chesnut Streeet, Philidelphia. I was in court when McMullin on the stand referred to a Mr. Stahl of the Stahl Detective Agency as one he had given as a reference to his character in 1925 when applying to the Burns Detective Agency. I believe I am the one to whom he referred. I have been in the detective business in Philidelphia about 22 years. I have known McMullin 11 or 12 years. He was employed by the Agency that I was superintendent of about 11 or 12 years ago and he worked under my supervision. I know other people who know him. I know his reputation for truth and veracity. It is not any good. I would not believe him on oath.

Thereupon the following occured:

Mr. Morgan: Now, if your Honor please, to save time, I offer to prove by this witness that in October, 1924, Mr. McMullin applied to Mr. Stahl for a position. That he represented to Mr. Stahl that he had changed his wild ways and asked him to take him on as an investigator. That to give him a chance Mr. Stahl did take him on in October, 1924. He became suspicious of him during the succeeding few months and that in January, 1925, he finally discovered definitely and conclusively that Mr. McMullin had made 3 or 4 false reports, and that he not only discharged
733 him from his employment, but literally, physically ejected him from his office.

The proffer was objected to, the objection sustained, and an exception duly noted, and the witness continued: McMullin's general reputation for truth and veracity is very bad.

Q. Have you ever in your life heard of a worse one?

The question was objected to and the objection sustained.

Mr. Wright. I reserve the exception, and expect to prove that the witness, if he were permitted to answer, would say that he never in his life had heard of a worse one.

Thereupon **Mrs. Janet Lantz** was called as a witness for the respondents, and being first duly sworn, testified as follows:

My husband's name is William Roy Lantz. We live in Millbourne, Pennsylvania, which is a subdivision of Philadelphia. I have known William James McMullin since March 5, 1927. He was *was* employed at Millbourne as a special officer for traffic on Saturdays and Sundays. My husband was employed on the same force and he got McMullen his position there. My husband and I became friends with Mr. and Mrs. McMullin. I got to know McMullin quite well. He spent a great deal of time in Millborne and got to know people there. The acquaintance spread. I know his reputation for truth and veracity. It is bad.

Thereupon the following occurred:

Q. How bad is it?

The question was objected to and the objection sustained.

Mr. Morgan. If your Honor please, I would like to proffer the proof that if she were permitted to testify she would say that it is extremely bad.

The witness continued:

I would not believe him on his oath. On January 8, 1928 I was at my mother's home in Huntingdon, Pennsylvania.

I saw McMullin that day in Shirleysling, Pennsyl-
734 mania, about 20 miles outside of Huntingdon. He and his wife were in his car. They were passing through the town. They did say something to me. I was going across the state highway and I heard somebody sound a horn, and I looked around and there was McMullin. He stopped his car and called me back.

Thereupon the following occurred:

Q. And what did he say to you?

Mr. Gordon: Now I object to the conversation, if the Court please.

Mr. Morgan: If your Honor please, I offer to prove by this witness that on that day and on that occasion Mr. McMullin told her, the witness, that she had better not let her husband testify in this case. That if he did he would be arrested by the United States Marshal. That he was sorry that her husband had evidenced some interest in this case and was going to testify on behalf of the Burns, because if he had not evidenced such interest he, McMullin, would have obtained for him a position in the United States Government, and he did not know now, whether it was too late or not. To see what could be done. That he told her that he was then in the employ of the Government and had just come from the oil fields of Wyoming. That he was so much in the employ of the Government that he was carrying Navy tags. That the letter "N" preceding the numerals on his tags indicated that they were Navy tags. I offer this for the purpose of proving bias and interest in this case and to contradict the testimony of McMullin.

The proffer was objected to, the objection sustained, and an exception duly noted on both grounds.

Mr. Wright: I want to add to the proffer of proof
735 by the witness who has just now left the stand that she would further testify that McMullin requested her to convey to her husband the things that Mr. Morgan mentioned in his proffer.

Thereupon **A. Lincoln Till** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I reside at 5416 Lansdowne Avenue, Philadelphia. I am supervisor of litigated claims, London Guaranty, an accident insurance company. I have been in that particular branch for about 2 years. I have known William J. McMullin for about 3 years. I know other people who know him. I know his reputation for truth and veracity. It is bad. I would absolutely not believe him on his oath.

Thereupon paper dated September 30, 1927, addressed to M. A. L. Till, with writing on the back thereof signed "A. L. Till," was marked by the clerk "Respondents' Exhibit 20 for Identification" and handed to the witness, and the witness continued:

I recognize this paper. I received it by mail, I assume from the Burns Detective Agency. I made reply to the inquiry, and the reply is on the reverse side in my handwriting.

Thereupon Respondents' Exhibit 20 for identification was offered in evidence to prove that the Burns Agency thought that they were employing W. V. Long, and not W. J. McMullin, and that they used reasonable care in employing him, objection was made and sustained, and an exception duly noted, and the exhibit is attached hereto.

Mr. Wright: We make the proffer on behalf of Mr. Day, and I do not know whether or not in these 42 or 43 volumes of testimony that there is an item which justifies the admission of this evidence, but I remember that your Honor did say in your opinion overruling the motion to dismiss:

736 "What happened in this case? Take up now for the moment the experience of this Agency with a man who has been on the stand and who has been assailed in evidence, that is, McMullin, and what happened? According to the contention of the respondents here this man broke faith with them and betrayed to someone the fact of this surveillance that was going on, through the medium of which it came to the notice of the prosecuting officers here. That, says the respondents is not their fault; in effect they contend that they did not know that they had taken a rascal on in their employ, but they took him on; they assigned him to this task and they assigned some fourteen others to the task."

I suppose that your Honor would not have made that observation unless there was some evidence to justify it. I do not know where it is, but it is to meet that, whatever evidence your Honor has in mind, that we make this proffer to show that they did not knowingly take a rascal on, that they did it in good faith, and that the man they took

on was not this McMullin but was Mr. Long, a respectable, honest man. And they went so far as to investigate the truth of the representations which McMullin made in his application, and that the man that their consciousness took on was Long and not McMullin.

The Court: Objection sustained.
Mr. Morgan: We note an exception.
Mr. Wright: We reserve the exception.
Mr. Hoover: Same exception.

Thereupon **John R. Kissel** was called as a witness for the respondents, and being first duly sworn testified as follows:

737 I live in Brooklyn, New York, and am an insurance broker at 12 E. 41st Street, New York City. I was employed in the Bureau of Investigation, Department of Justice from November, 1921, to December, 1925. I was a Special Agent, an Investigator. As such I had occasion to shadow my number of the juries in cases on trial.

Thereupon the following occurred:

Q. On behalf of the United States government?

Mr. Gordon: Objected to.

The Court: What is the purpose of it, Mr. Morgan?

Mr. Morgan: If your Honor please, I propose to show by this witness and by several witnesses the almost—well, I will call it the universal practice and custom, established practice and custom of shadowing, "surveilling," spying upon jurors by detectives, investigators, or call them what you will, in cases on trial on behalf of the United States Government. When I say that I mean not such an observation of the jury as generally carried on by a Marshal having in charge the jury, but by men unknown to the jury. Cases identical with the case on trial. That it has continued, we will prove by this witness—by this witness' two cases—and by other witnesses, over a great many years. We will show your Honor from one witness alone that for 20 years of his experience there has not been a year passed by that he was not called upon to place a juror,

a member of the jury, under surveillance in cases when the case was actually on trial.

We will prove by witnesses along this line, if your Honor please, that right within the walls of this very room, at the direction of our esteemed friend, Major Gordon, in a case, if your Honor please, in which the prosecuting counsel, the one who closely directed the operations of the detectives is, at present, Judge Parker; that in that case the jury, every member of the jury was under sur-
738 veillance by an intricate system of charts, whereby the men were switched from day to day, where every lawyer and every witness was under surveillance, where my esteemed partner was under surveillance—and knowing it, if your Honor please that they did exactly, in all those cases, exactly as the defendants in the Fall-Sinclair case did. That is the line of testimony we wish to offer, and which we are initiating by this witness.

The proffer was offered on the further grounds that Mr. Sherman Burns, at the time he agreed to accept this engagement from Mr. Day for Mr. Sinclair, had knowledge of the fact that the government had, for many years, been engaged in this practice; that it was the custom of the government to place juries under espionage, and, knowing that that was the practice engaged in by the government and which had been engaged in by the government, and feeling in his own mind that it was the lawful thing to do, he therefore accepted this employment. The proffer was objected to as irrelevant and immaterial and an exception duly noted.

Mr. Morgan: If your Honor please, we offer to prove by this witness that in May, 1924, in the case of United States v. Guggenheim Brothers Distillery Company, brought in the city of Pittsburgh, in the State of Pennsylvania, heard by an unsuspected and unsuspecting jury, the United States Department of Justice caused a large number of investigators to shadow the entire jury. That the men first engaged were of large stature, and it was thought that the jury might become conscious of the fact that they were being shadowed, so they engaged an entirely new corps of detectives, or investigators, as they are called in the Department of Justice, of which Mr. Kissel here was one of the men.

These men were of smaller stature. Five men of the Department of Justice left the City of New York, and
739 Mr. Kissel was directed to go by his superior officer to the city of Erie, where he relieved an investigator then shadowing one of the jurors in that case. At the time at which Mr. Kissel relieved the investigator then on the case, it was during the holiday of Memorial day; but he remained in the vicinity of the juror's house, kept him under close surveillance, spied on him and shadowed him, and took him up in the morning and put him to bed at night, to use the language of the trade; that on Monday morning the juror journeyed on the train from Erie to Pittsburgh, and that this witness shadowed him, spied on him, and kept him under surveillance the entire distance to Pittsburgh, sitting in the seat immediately behind the juror; that he then continued the surveillance of the juror, he spied on him and shadowed him until he went to bed that night—until the juror went to bed that night—and that he immediately resumed his espionage, his surveillance and his shadowing early the next morning, and kept that juror under complete surveillance, espionage and shadowing for nine days, until the termination of the trial, and that that was true with respect to all of the other jurors; that not only did the surveillance relate to the actual trial, but at the direction of a superior officer they kept the jury under surveillance while they were in the actual deliberation on their verdict, and that this was under the direction of the District Attorney; that the jurors deliberated on their verdict in the second story of the Court House, and that the operatives were directed to go to the third story and look down thru the windows and keep the jury under surveillance; that all of this was without the knowledge of the jury, and that on the following morning, when the jury went to breakfast, accompanied by the marshals having them in charge, these operatives, under the direction of
their superior officer kept the entire panel of the
740 jury under surveillance, including the United States Marshals, none of whom had any knowledge that they were being shadowed. That so much related to the case of the United States v. Guggenheim Bros. Distilling Company in May, 1924.

We also proffer to prove that in June, 1924, in the case of United States v. Gaston B. Means, tried in the City of New York, the entire panel was put under surveillance, and that this witness, as an investigator for the United States Department of Justice, relieved one of the investigators in shadowing one juror by the name of Mannheim, and kept him under complete, close surveillance, shadowing and espionage for three days; that is to say, to the end of trial.

Mr. Hoover: We join in the proffer which has just been made, if the Court please, on behalf of Mr. Sinclair.

Mr. Wright: We note an exception on behalf of Mr. Day, and make the same proffer as has been made on behalf of Mr. Burns, and also make this additional proffer. I do not know whether I should put the questions which will develop the situation, or just make the proffer. I will do as your Honor thinks best.

The Court: I should think, Judge Wright, if you would make your proffer it would accomplish the purpose just as though you put your question to the witness, and it would shorten the matter considerably.

Mr. Wright: Very well, your Honor. On behalf of Mr. Day we would expect to prove, if the witness was permitted to answer, that there was a general custom of the Department of Justice and the District Attorneys of the United States, throughout the United States, acquiesced in continuously for more than thirty years, to shadow,
741 through its employees and representatives jurors, both entire juries and members of the panel, to keep them under surveillance during all of the time they were not in actual attendance upon the Court, to observe them as closely as possible when they were abroad from the court room from their places of business and from their residences and watch their residence after they had gotten home at night.

Mr. Hoover: We join in the proffer on behalf of Mr. Sinclair, if your Honor please.

Mr. Wright: Just a minute. I should have said that we expect to prove by this and other witnesses, Mr. Stenographer. I want to conclude the proffer with this, that there was no reason to suspect, at the time of the shadowings, there was no reason to suspect any lack of integrity

upon the part of any juror, or to suspect that any person was endeavoring to improperly approach them.

Mr. Morgan: If your Honor please, the facts which I have recounted by way of proffer we would expect to prove, if this witness were permitted to testify. In order to get our exception, I ask your Honor to permit him to so testify.

The Court: No objection has been interposed.

Mr. Morgan: All right. I have not had any ruling since my proffer. I anticipate the District Attorney will object to it and your Honor will rule.

Mr. Gordon: Of course, we object to it, if your Honor please.

The Court: Objection sustained.

Mr. Morgan: And we note an exception.

The Court: Yes.

Mr. Hoover: And we note an exception on behalf of Mr. Sinclair.

742 Mr. Wright: And we note an exception on behalf of Mr. Day.

Thereupon **Felix Quigley** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live at 304 W. 121st Street, New York City. I am retired. I retired from the United States Treasury Department. I was an agent, an investigator. I was employed in the Bureau of Investigation, Department of Justice from March, 1922 to April 1, 1927, as an agent, or investigator. I was employed by the New York City Police Department in the same capacity for 26 years. I am familiar with the practice in the Department of Justice with respect to the surveillance of juries while cases are on trial.

Thereupon the following occurred:

Q. And what was the practice?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Morgan: I note an exception, and I proffer to prove by this witness, if he be permitted to testify, that it has been the practice and the custom of the Department of Justice and the District Attorneys in the Federal Districts

throughout the United States for many years to shadow and to spy upon jurors during the actual trial of cases in which the United States is a party, and that on behalf of the United States, throughout the entire trial, irrespective of whether or not the District Attorney had any suspicion of the jury, or had a suspicion of any particular person.

Q. I will ask you if you yourself ever took part as an investigator for the Department of Justice in any actual shadowing of the jury during a case then on trial?

743 The question was objected to, the objection sustained, and an exception duly noted.

Mr. Morgan: I note an exception, and I proffer by this witness and expect to prove by him if he is permitted to answer, the following facts: That from September 20th to September 29th, 1926, this witness, with several other investigators of the Department of Justice, at least eight and perhaps more operatives or investigators, shadowed the petit jury engaged in the case of the United States v. Israel Gold & Son, and at the direction of his superior officer left the city of New York in company with two other investigators from New York and proceeded to the city of Pittsburgh, where he then met the investigator in charge, one Starr, and proceeded with the other operatives to the city of Erie, where they placed the entire panel under surveillance, espionage and shadowing. The case then was actually on trial, and a great many of the jurors, I believe the evidence will show all of the jurors, lived out of the city of Erie, and were living in three hotels and the Elks Club; that these operatives were directed to go to these hotels, some going to the different hotels and some going to the Elks Club, and that they there kept the jury under complete, close surveillance, espionage and shadowing from the time they got up in the morning until the time they went to bed at night, and even at some times they would mingle with the jurors, unsuspecting as they were, and talk to them and that they were directed to report any one attempting to make contact with the jurors, and report the numbers of any automobiles in which persons who had made contact with these jurors were riding, and that they did actually report contacts made with the

jurors, and also the automobile numbers of persons who were seen talking to the jurors.

That this surveillance and espionage was inde-
744 pendent and not the same as the custody of the United States Marshals, and that the jury were unaware of the shadowing.

Mr. Gordon: Objected to.

The Court: Objection sustained.

Mr. Hoover: We would like to have the record show that we join in the proffer which was made to prove the custom.

The Court: Mr. Hoover, I am clearly of the impression that you and Judge Wright on behalf of Mr. Day are joining in the proffers.

Mr. Hoover: We joined with respect to the other witness, and I want to join as to this proffer. We join in the proffer which was made to prove the custom, as Mr. Morgan has proffered to the Court, and also in the proffer which has just been made to prove the knowledge of this witness with respect to the shadowing, proffered by Mr. Morgan, and we note an exception to the ruling of the Court on behalf of Mr. Sinclair.

Mr. Wright: Mr. Day reserves the exception and makes the same proffer which Mr. Morgan has made, and this additional proffer. We will prove, if this and other witnesses were permitted to answer, that for a time so long as the memory of man runneth not to the contrary, in the city of New York, it has been a continuous and unbroken custom of the United States District Attorney in the trial of criminal cases in the city of New York to keep under surveillance jurors just as was done in this case at bar; that prior to the fall of 1927 Mr. Day had spent considerable time in the city of New York, that the custom which I have spoken of in the City of New York was a matter of common knowledge, and that Mr. Day knew of that custom in the fall of 1927 before the Burns Agency was employed in this case.

Mr. Morgan: I would like to add to this proffer
745 that in this particular case of United States v. Israel Gold in 1926 some of the jurors, not all of them, did become suspicious of the fact that they were being shadowed, before the termination of the surveillance.

Thereupon **Daniel F. Dwyer** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live in Tarrytown, New York. I am employed by the United States Treasury Department as investigator in the Major Conspiracy Unit of the Prohibition Unit of the Bureau of Interal Revenue. I was employed by the Department of Justice from March, 1922 to April, 1927, as Special Agent, Bureau of Investigation. I made investigations of facts for the Department of Justice. My headquarters were in New York, but I worked all over the entire country. As such investigator of the Department of Justice, I was called upon to shadow a petit juror. I know what the practice is in the Department of Justice respecting the shadowing of jurors while cases are actually on trial.

Thereupon the following occurred:

Q. What is it?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Morgan: Now, if your Honor please, we wish to proffer by this witness that it has been the practice and custom of the Department of Justice and the Federal District Attorneys throughout the United States for many years to shadow juries in cases in which the United States has an interest on behalf of the United States, whenever the District Attorney in charge deems it advisable so to do, and without any relation as to whether or not he had reason or did suspect any one or all of the jurors.

746 Your Honor has said that your Honor will not permit that testimony to be introduced?

The Court: I have just said. I have already sustained the objection.

Mr. Morgan: We note an exception.

Mr. Hoover: And we note an exception.

The Court: Yes, sir.

Mr. Wright: We note the exception.

Mr. Morgan: If your Honor please, I offer to prove by this witness, and expect he will say, if permitted to testify,

that in April, 1922, in the case of United States v. The Cement Trust, he shadowed a juror in the case then on trial in the City of New York. I further expect to prove by this witness that in September, 1926, he accompanied Mr. Quigley, in the case of United States v. Israel Gold, and in order to save time I repeat the proffer that I made when Mr. Quigley was on the stand, and state here that Mr. Dwyer was one of the New York investigators who accompanied Mr. Quigley and remained in that case shadowing the jury for nine days, until its termination.

I expect further to prove by this witness, if he is permitted to testify, that in February, 1927, in the case of United States v. Hoover Brothers and John E. Dugan, for conspiracy, tried in the City of Pittsburgh, Pennsylvania, at the direction of his superior officer this witness went to Pittsburgh under cover with several investigators of the Department of Justice, and there, at the direction of the District Attorney, placed the entire jury under surveillance, espionage, and shadowing. In this case, if your Honor please, these operatives put the jury, as I have stated, under complete surveillance, espionage, and shadowing, and on February 12th, the holiday of Lin-
747 coln's birthday, they took four of the jurors, the defendant and the attorneys to Uniontown, Pennsylvania, and where I use the word "took" I use it in the language of the trade, so to speak. They shadowed them from Pittsburgh to Uniontown, and there kept them under shadow——

The Court (Interposing): The defendant in company with the four jurors?

Mr. Morgan: They all went on the same train to Uniontown. They all rode in the same coach to Uniontown, Pennsylvania. That when they returned to trial the following day, they brought them back to Pittsburgh, they kept them under close surveillance, espionage and shadowing, and continued so to do until the termination of the trial, and got them up in the morning and put them to bed at night.

The Court: Is that all?

Mr. Morgan: Yes, sir. Your Honor will not permit that testimony?

The Court: I have already ruled.

Mr. Hoover: We note an exception, if your Honor please.

Mr. Morgan: If your Honor please, I also wish to add to my proffer that in the last mentioned case of United States vs. Hoover Brothers and John E. Dugan, some of the jurors finally became suspicious of the fact that they were being shadowed, and that the operatives knew that they became suspicious of the fact that they were being shadowed by United States detectives in this case.

Thereupon **Mortimer J. Davis** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live at 273 McDonough Street, Brooklyn, New
748 York. I am employed by the National Association of Credit Men as representative and investigation. I was employed by the Bureau of Investigation of the Department of Justice from January, 1918 to the middle of July, 1925 as special agent. I collected facts for the Department of Justice, collected evidence, and so forth.

Thereupon the following occurred:

Q. Were you, as such investigator or special agent, employed in the shadowing of the petit jury in a case in which the United States was a party, during the actual trial of the case.

The question was objected to, the objection sustained, and an exception duly noted.

Q. Are you familiar with the custom of the Department of Justice with respect to shadowing jurors while cases are actually on trial?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Morgan: I offer to prove by this witness, if your Honor please, that he is familiar with the practice of the Department of Justice, and the custom of the Department of Justice with respect to the shadowing of petit jurors in cases in which the United States is an interested party.

while the case is actually on trial, and that that practice is —that he has known that practice since 1918, and that the practice is that in many cases, and for many years, it has been the custom of the Department of Justice and District Attorneys throughout the United States in the several jurisdictions to keep the jurors in cases on trial under surveillance, espionage, and shadowing whenever, in the opinion of the District Attorney, he thought it wise so to do, without any relation or respect to whether or not he
749 had any reason to suspect the jury or any one of them. And we note an exception to your Honor's failure to permit this testimony to be introduced.

Mr. Hoover: We note an exception also on behalf of Mr. Sinclair. Your Honor has not ruled on that, but I take it the prior ruling would apply.

Mr. Morgan: We also expect to show and make the proffer to prove by the witness that in the year of 1924, to be more specific, in the spring of 1924, in the case of United States v. John L. Phillips, and others, tried in the Supreme Court of the District of Columbia, in the very room in which we are now sitting, at least eight men at all times, and sometimes more, being investigators of the Department of Justice, were employed and did keep that jury under complete, close surveillance, espionage, and shadowing at all times to such an extent that one of the investigators slept in the doorway of one of the jurors the whole night through. And that they took them up in the morning and put them to bed at night, and that this continued from the beginning of the trial until the end, a period of over two months. That the operatives were rotated from one juror to another by an intricate chart. That they not only shadowed the jurors, but they shadowed the lawyers and the witnesses as well. That some of the jurors became aware of the shadowing before the case was over, and that this fact was known to this witness. And that the United States officials to whom these men reported was then the present District Attorney, Major Peyton Gordon.

Mr. Gordon: That is a lie.

Mr. Morgan: I think, in fairness to Major Gordon it should be stated that the special counsel were Mr. Borchard, and Judge Parker.

750 We expect further to prove, if your Honor please——

The Court (interposing): May I ask a question: I am trying to recall—what was the verdict in that case?

Mr. Morgan: Acquittal. That there was no reason to suspect any of these jurors; that these operatives were called into the case before the jury was ever selected. That is all that we expect to prove by the witness along this line. If your Honor please, your Honor will allow us an exception to your ruling.

Q. Do you know whether or not there was during the time, the years that you were employed by the Department of Justice, a custom of that Department with respect to shadowing juries sworn and empanelled in criminal cases in the courts of the United States. A. Yes, sir.

Q. What was that custom?

Mr. Gordon: We object to that.

The Court: Objection sustained.

Mr. Wright: Now, that saves the point. Now, we renew our proffer, may it please your Honor, especially with respect to the custom during all the seven years this witness was in the office.

Mr. Hoover: We join in that, and note an exception to the ruling of the Court.

Thereupon **Harry J. Jentzer** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I reside at 1082 E. 15th Street, Brooklyn, New York. I am now employed by the National Association of Credit Men as Special Investigator. I was employed by the Bureau of Investigation of the Department of Justice from 1906 to 1926. I investigated all violations of the law that the Government was interested in, under the direc-
751 tion of my superior officers.

Thereupon the following occurred:

Q. Do you know what is the custom of the Department of Justice in the last 20 years with respect to the shadowing of petit jurors in criminal cases in which the United States is a complainant while the case is actually on trial? Just say yes or no.

The question was objected to, the objection sustained, and an exception duly noted; and the offer made to prove by this witness that he does know what is the custom.

Q. Mr. Jentzer: What is the practice of the Department of Justice with respect to the shadowing of petit jurors in criminal cases in which the United States is complainant while the case is actually on trial?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Morgan: I note an exception. I expect to prove by this witness, if permitted to testify, that it has been the practice and the custom of the Department of Justice and the several District Attorneys throughout the United States for the last 20 years, at least, in criminal cases in which the United States is the complainant, to shadow, by the investigators of the Department of Justice, petit jurors, and the entire panel, while the case is on trial, whenever the District Attorney or those having charge of the litigation thought best so to do, without any suspicion of any one juror or any of the panel. I understand your Honor will not permit that testimony to be introduced, and I note an exception.

Mr. Hoover: We note an exception also.

Mr. Morgan: And further, if your Honor please, I would like to state that this was done in many instances in
752 which the juror did not suspect it, and in other cases where the juror did suspect it.

If your Honor please, I expect further to prove by this witness, and proffer this testimony, and expect to prove it if he will be permitted to testify, that for the last 20 years —for the 20 years for which he was employed, that there was not a year passed by without his being called to engage in the shadowing of a jury in a criminal case then on trial. I will say this, that I expect to prove by this witness that during the 20 years that he was in the Department of Justice as an investigator no year went by without him being called out to shadow a petit jury, or to take part in the shadowing of a petit jury in a case in which the United States was complainant; that is to say, criminal case.

I expect also to prove by this witness several specific cases in which he was employed to keep the petit jury under complete, close surveillance, espionage and shadowing. First is the Sugar Fraud case in 1907 in which the jury and the entire panel was put under surveillance and espionage. Then came the case, in 1914, a criminal case, in which the United States was interested, in Buffalo. The next case in which he was employed as an investigator to shadow the petit jury was the National Cash Register Company in 1914, at Cincinnati, Ohio. The next case was the Manny Kessler case, in 1923, where the operatives were employed first to assist in the selection of the jury and were kept on after the jury was selected to keep the jury under surveillance until the trial was completed.

Mr. Hoover: That was in New York, wasn't it?

Mr. Morgan: That was in New York. In 1908 or 1909 this witness was employed in what is known as United States v. Scheffel, the real respondent or defendant being George Graham Rice. In that case, at the direction of his superior officers, he with other operatives, shadowed the petit jury in the case then on trial.

753

I also tender his evidence, and for the purpose of saving time, refer to the tender that I made while Mr. Walter Davis was on the stand with respect to the Phillips case, as this witness was one of the operatives or investigators of the Department of Justice that shadowed the jurors, lawyers, witnesses, and defendants in the Phillips Lumber case in this very court room.

Now, if your Honor please, if this witness is permitted to testify he would prove those facts, or we could prove those facts by him.

Mr. Gordon: I object.

Mr. Morgan: I understand your Honor will not permit such testimony to be introduced, and, therefore, we note an exception.

Mr. Hoover: We note an exception also.

Mr. Wright: So does Mr. Day.

Q. Do you know whether or not the Department of Justice through its agencies has shadowed United States judges?

Mr. Gordon: Objected to, if your Honor please.

The Court: Objection sustained.

Mr. Wright: We reserve the exception, and expect to prove that the witness, if permitted to answer, that he would answer yes, that he had done it himself under the direction of the Attorney General of the United States.

Mr. Douglas: We note an exception, if your Honor please, on behalf of Burns.

Mr. Hoover: We note an exception also.

754 Q. Did you ever, or not, shadow in the District of Columbia a justice of a United States Court of the District of Columbia?

Mr. Gordon: Objected to.

The Court: Sustained.

Mr. Wright: We note an exception.

Mr. Morgan: We note an exception.

Mr. Wright: And if the witness were permitted to answer we expect to prove by him that he did, for a period of four months, and that it was done under the orders of the Attorney General.

Thereupon the witness was cross-examined as follows:

I was a special employee until the Bureau of Investigation was organized. The original appointment was in 1906. The Bureau was not organized until after that period.

Thereupon the witness was further examined as follows:

I was employed by the Department of Justice as an investigator to do the same kind of work. The title was different and paid from a different appropriation. I did the same work for 20 years.

Thereupon **Barton P. Stewart**, a witness heretofore called for the United States, was called as a witness for the respondents, having been heretofore duly sworn, testified as follows:

I left Philadelphia to come to Washington on October 18th, and arrived here on the morning of the 19th about 7:30. I first saw Ruddy about 8 o'clock, at Union Station. In my direct examination by the United States I am reported as saying that O'Reilley gave me the address

of Kidwell that first day. I do not believe that that is the answer I gave on direct examination. The answer that I gave when I testified before was that Robbins or Ruddy gave me the slip of paper with the instructions.
755 I am incorrectly reported that it was O'Reilly. The fact about it is that either Ruddy or Robbins gave me the address of Kidwell on the first day I came here. I got that address on the 19th. I first saw O'Reilly after coming here to work around 1 o'clock the morning of the 20th. I went to the vicinity of Kidwell's house the evening of the 19th, before I saw O'Reilly for the first time. I am reported as having testified, with respect to the first meeting at which I received the address of Kidwell, that Long, Klein, Ruddy, Robbins, Kirby and Hourighausen were present. That answer is correct.

Thereupon the witness was cross examined as follows:

While a witness for the Government I was asked who gave me the address of Kidwell that first day. I am reported as answering. "Why, I think Mr. O'Reilly. I am pretty sure about that." I don't think that is reported correctly. I did not use the name of O'Reilly in response to that question.

Thereupon **Jack E. Dadswell** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live at 126 13th Street, North Street, Petersburg, Florida. I know William J. Burns. I was in Washington October 13, 1922. I had a business appointment with W. J. Burns and Admiral Bullard. I met Mr. Burns on October 13th, at about 8:45 a. m., at the Willard Hotel. I had made arrangements to meet Mr. Burns before coming here by telegraphing him from Sarasota, Florida to New York. (Witness was handed a paper.) This is the telegram I had sent to Mr. Burns. Mr. Hitchings is the president of the Bank of Sarasota and Chairman of the Radio Committee of the Chamber of Commerce of Sarasota. I was with Mr. Hitchings when he sent that telegram to Mr. Burns.
756 I came here on behalf of the Chamber of Commerce of Sarasota, Florida. (Witness was handed a telegram from W. J. Burns to Mr. Hitchings) I received from

the Western Union Telegraph Office before I left Sarasota and came to Washington this telegram, a telegram similar to this, giving this same substance, the time at which Mr. Burns would meet me at the place, and fixing the date. I do not think the telegram was addressed to me, but was addressed to the Chamber of Commerce, or to Mr. Hitchings, but in substance it was delivered to me, giving the time at which I was to meet Mr. Burns. I imagine the telegram was handed to me or shown to me, at least the contents of a telegram. I left Sarasota for Washington and I met Mr. Burns at a specified time, at a specified place in this city on a specified day in conformity with the telegram which was shown to me.

Thereupon the respondents offered in evidence the following:

"RESPONDENTS' EXHIBIT No. 21."

"93N F Nw 47 Blue Xu.

Sarasota Flo 242P Oct. 10, 1927.

W. J. Burns,
Suite 1125 165 Bway.

Would it be possible for you to meet with Mr. Dadswell at Federal Radio Commissioners Office Washington DC and confer with Mr. Bullard Chairman Thursday morning at nine am stop very important as Dadswell is moving the Financial Journal broadcasting station from Tampa to Sarasota wire answer.

C. E. HITCHINGS,
325P."

The witness continued:

I have not got the original telegram signed by Mr. Burns in New York and sent to Mr. Hitchings in Sarasota. It is in the files at the Chamber of Commerce in Sarasota. I saw the telegram that Hitchings sent Burns in New York, asking him to meet me in Washington on Thursday morning at the Radio Commissioner's Office. Before I
737 came from Sarasota to Washington Hitchings or I received word from Mr. Burns to the effect that he would meet me here. That is the reason I came to Wash-

ington, as the result of that telegram from Mr. Burns. I got here about 7 a. m. on October 13th. I stopped at the Raleigh Hotel. I met Mr. Burns at the Willard at 8:45 and he and I went immediately to the Commerce Building, to the office of the Radio Commissioner. We were there from about 9 o'clock to about 12:30. One of the objects of the conference was to confer with Admiral Bullard at this place. I left Washington about 10 o'clock that night. I had a conversation with Mr. Burns near the Willard. After it, Mr. Burns went to his office in Washington and I went to the hotel. The conversation was just before we parted.

Thereupon the following occurred:

Q. Tell the conversation.

The question was objected to and the objection sustained.

Mr. Wright: I reserve an exception on the ground that a declaration in the conversation when a person starts to go somewhere is always relevant.

The witness continued:

The subject of that conversation was as to where I would be able to get hold of Mr. Burns during a certain period of that day.

Thereupon the following occurred:

Mr. Wright: May it please your Honor, this morning I arose and began to make a proffer of proof and then withdrew the proffer. On reflection I think that on account of the great saving of expense which might be involved I ought to make the proffer now and by so doing save the expense of bringing here many witnesses who are on their
758 way. And that is, on behalf of Mr. Day we have secured and expect to present the testimony of a great many witnesses from all parts of the United States whose testimony will be upon the subject of shadowing in a line with that that we offered this morning, that the United States District Attorneys throughout the United States, under the direction of the Department of Justice, by agents of the Department of Justice, as distinguished from local United States Marshals, have indulged in that custom, as I said this morning, during a time whereof the memory of man runneth not to the contrary. So if I can make that

proffer now, if the Court please, I can stop many witnesses coming here who are on their way now, and save that expense. So I make that proffer, may it please your Honor, and as a result I can save a great deal of expense by making the proffer now.

Mr. Gordon: I object to the proffer.

The Court: The same ruling. The objection is sustained.

Mr. Wright: Exception, your Honor.

The Court: Yes.

Mr. Douglas. We except too.

Thereupon the United States withdrew its objection that had been made and sustained to the conversation between Mrs. Lantz and McMullin on January 8, 1928 at Shirleysburg, Pennsylvania, which was offered by the respondents when the witness Mrs. Lantz was on the stand for the purpose of showing the bias of McMullin and the fact that he had tried to suppress testimony in the pending case. Mr. Morgan then withdrew his proffer of that evidence, but Judge Wright refused to withdraw.

Thereupon **Daniel Thew Wright** was called as a witness for the respondents, and being first duly sworn,
759 testified as follows:

I reside in Washington, D. C., and as a lawyer. I have been engaged in the practice of law in Washington for 14 years, ever since I resigned from the bench. In November, 1927 I met the witness W. J. McMullin for the purpose of getting from him an affidavit in the contempt case. I first saw him on the third of November, 1927, at my office, 917 Fifteenth Street. During the week in which that day was, I had been engaged daily and continuously in a trial before Judge Stafford and did not return to my office until the neighborhood of four o'clock in the afternoon. I saw McMullin on the 3d of November about four o'clock at my office. He told me he had been at my office the day before, and I, not being there until after four, he had left and gone away.

I inquired as to his movements in the shadowing of Juror Glasscock. He told me that on the occasion which was identified as that upon which he had shadowed Glasscock to the Flying Field, that he had been in the vicinity of

Glasscock's place of employment, Somerville's Plumbing Supply establishment, that Glasscock came out, entered his automobile, drove through D Street to Pennsylvania Avenue; that he, McMullin had observed a two-tone roadster to which his attention was directed because it had forced itself in between him and Glasscock's car; that his attention was attracted by that as well as by the two tones of the car, and while they were proceeding along Pennsylvania Avenue he read the number, but that the traffic was somewhat congested and he did not have the opportunity to put the number down on the avenue, because he had to watch his driving with both hands. As Glasscock turned northwardly from Pennsylvania Avenue, the two-toned
760 roadster followed him; that he, McMullin, followed the two-toned roadster. There was practically no traffic on that street, and that he then took a card from his pocket with one hand and a lead pencil and noted down the car number on his card, the number which was in the affidavit. The license number of the two toned car, He said that Juror Glasscock drove to his house, the two-toned car went on without stopping. Glasscock came out with his wife and two children, entered his own car and drove to the Potomac Flying Field in Virginia. I said "The Flying Field is not in Virginia, it is in Maryland." I did not know then that there was a flying field in Virginia, but I knew there was one in Maryland, Bolling Field, because I pass there twice a week every week. He said "No, it is in Virginia." I said, "No, you are mistaken. You went across the Navy Yard bridge, didn't you, to get to it?" I motioned with my hand in the direction of the Navy Yard Bridge. He said "No, I did not go across that bridge at all. I went across this bridge down here, the bridge which has a street car track on it, and right below it is a railroad bridge. That is the bridge I went across." He said "At the other end of it, just at the left hand end of the bridge that I went over, is a large yacht club. There are a great many yachts." I knew that yacht club. That is the Corinthian Yacht Club, that there was a yacht club there, and I had occasion afterward to go to Alexandria, I think it was the 4th of December, and being interested I noticed when we crossed the bridge whether or not there was a flying field over in that vicinity, and I saw, much to my surprise, that there was. It

was the first time I ever knew that it was there. He told me that there was parking space on both sides of the entrance to the flying field, and that there were five or six
761 cars already parked; that Juror Glasscock's car was parked on the right of the entrance, but he, McMullin, undertook to park on the left of the entrance, so that Glasscock would not notice him. As he was parking he noticed the same two-toned car that he had seen following Glasscock on the Avenue, coming up the street. After he had parked his car he said that he alighted and walked around to the rear of the two toned car and checked the number. That he took out the card that he had written the number on and he checked the numbers, and they were the same. Then he looked towards Glasscock's car and saw Glasscock out of his car, or rather a short distance from his car, in conference with a man, and that they talked fifteen or twenty minutes. The man left Glasscock. McMullin watched him until he had entered the two-toned car. Then he drove away. He, McMullin, watched until Glasscock had entered his car and then he followed Glasscock home to his house. I questioned him in very considerable detail, so that I had the story practically in mind, before I undertook to dictate an affidavit. That was in your office on the afternoon of November 3rd. I then rang for my secretary, who had not been in my private room up until this moment. McMullin sat across at the other side of my table opposite me, and my secretary sat at my left, writing on a pulled-out sheaf such as desks commonly have. I began the dictation of the affidavit and proceeded so far until I was about to dictate the time at which Glasscock left the Somerville establishment. I asked McMullin what time it was, and he said "I think it was twelve-thirty, but I am not sure. It might have been two-thirty. If I had my report here from New York I could tell you the exact minute, because it is in my report." And he repeated, "I won't say, I would not like to say whether it is twelve-thirty or two-thirty.
762 I do not want to say anything that I am not sure about, and it is in my report." I said, "Your report will be here at the Wardman Park Hotel tonight. It is on the way now from New York." I said, "I live at Wardman Park Hotel and will you meet me at Ruddy's room after I have my dinner? I want to go home and eat a bite of

dinner, and I will go immediately to Mr. Ruddy's room, if you will meet me there." He said "I will meet you there," and I said "You check the report and fix the time exactly and accurately, and then we will finish the affidavit." The conference then broke up. Before I left the office that night my secretary had laid on my desk so much of the affidavit as I had already dictated. She had transcribed it. It was the first two paragraphs, and those words in the first line of the third paragraph which end with the word "about." It was this that she transcribed:

"William V. Long, being duly sworn, states that he is an investigator in the employ of the Philadelphia Office of the William J. Burns International Detective Agency, Incorporated, and resides at 1508 Kingsdale, Oak Lawn, Philadelphia, Pennsylvania.

"On October 22, 1927, and for some days prior thereto, he was in the City of Washington, D. C., under instructions of his superior C. G. Ruddy, manager of the Philadelphia branch of said Agency.

On Saturday, October 22, 1927, at about"——

I had put that much of the affidavit as my secretary had written in my pocket. After dinner I went to Mr. Ruddy's room at the Wardman Park Hotel. The entrance was through a small vestibule, perhaps four or five feet square, with a door on each side, one to the right and one to the left. They had two rooms. As I entered the left room Mr. Ruddy was seated near the window at a small side
763 table no longer than that at which Mr. Littleton is seated, no larger than 18 inches by a scant three feet, I should say. Mr. Lodge was there in conference with McMullin. As I entered Mr. Ruddy got up and I took a seat at the table and asked if he had a stenographer. He said "No, he did not." I asked if he had a typewriter, and he said "Yes, we have a typewriter in the next room." I said "Can anybody write on it?" He said "Yes, one of our men that is here tonight is quite expert on the typewriter," a man who has since died, Shoemaker,—I then took from my pocket the paper that I had brought from the office, which contained as much of the affidavit as I had dictated. I took a pencil and asked McMullin to sit down at the other end of the table, which he did. He sat down

at my right, Mr. Lodge was a little bit behind me on my left. I wrote then in lead pencil, asking McMullin, perhaps six or eight lines in lead pencil, then called to Ruddy—Ruddy was in the other room—and said "Mr. Ruddy, we will save time if you will take this up and let the man at the typewriter be copying this, and meanwhile I will write another paragraph for you, and we will formulate the affidavit in that way and save time," because I was in a hurry. I handed it to Mr. Ruddy and asked him if he had any more papers. He went out in the other room and came back with some Wardman Park Hotel paper, and I wrote on the back of it. I would write about a paragraph, and I suppose I wrote, oh, at least five or six different sheets of paper, inquiring with great particularity of McMullin at the time, and when I would finish the paragraph I would read it over to him and say "Now, have I got that right?" If there was any change of phraseology—I do not recall that there was any—it was of course corrected. Then I would call Ruddy and Ruddy would take that paper out to
764 the man in the other room, and I would start to write another series of lines, six, eight, nine, ten, or whatever it was, until I got to another period, and Ruddy would take that out. Meanwhile I told—my impression is I told Ruddy to telephone for Mr. Moore, who is the managing director of the Wardman Park Hotel, and who lives at the Wardman Park Hotel, and who is a notary public. I think he telephoned for Moore; at any rate, Mr. Moore came in, but not, my recollection is, until after I had completed the writing of the affidavit. I do not recall whether Moore was there when McMullin and I were reading the affidavit over or not, because I sat with my back to the door and my face to the window. Mr. Shoemaker brought in the finished affidavit, with at least one carbon, and perhaps more. I have one carbon which I got at that time. I handed the original affidavit to McMullin and read the carbon—not aloud. I said, "Now, read it over. Read it with care." I read the carbon as he was reading the original. When he had finished reading it he said "That is all right," and started to take up the pen and sign it. Mr. Lodge said "Let me see that before you sign it," and Mr. Lodge took it and read it and said "That is all right; that is just what you have said, McMullin." McMullin signed the affidavit. During the

time that I was at that table, I have forgotten at just what period, McMullin took a piece of paper and drew a diagram of the entrance to the Flying Field and showed Mr. Lodge where Glasscock's car was parked and where his car was parked. Long is the name he used, and I called him "Long." I saw the diagram he drew, and heard the discussion between them while he was drawing it. He had done the same thing in my office in a general way. When I told him that there was no flying field over there in Virginia, that the flying field was in Maryland, he told me
765 about going over the bridge that had a yacht club at the other end of it at the left hand end of the bridge, and he took a piece of paper that was on my desk and a pencil, and he said "Here is the end of the bridge, and a street runs on that way, and another street turns around this way, and here is the flying field," and he drew the entrance way. He said "Glasscock's car was over here and I parked over here, and that is there I saw this two-toned car when it was parked." I did not go to the entrance of the flying field. I had occasion to go to Alexandria one afternoon to attend to come corporate meetings, and I drove the straight road from the end of the bridge. I understand the entrance to the flying field is on another road which you turn off to the right, and it is around the corner. I did not go around the corner, but I saw the sign up of the flying field. McMullin explained the location of the buildings at the flying field to Mr. Lodge. He did not explain any buildings to me in my office. Long read over the affidavit thoroughly, word for word. Lodge read it too. Every word of the affidavit was gotten from Long himself. He didn't have any report at my office, out he had the original report from New York at the hotel. When I was writing the affidavit in sections, when I would read a section to him, I would ask, "Is this right?" I don't suppose I used the word "true." I had no suspicion it was not true. There is no doubt McMullin knew every word that was in that affidavit, and every word he told me was correct with the idea he was going to swear to it. He came to my office on November 2nd when I was not there. He said that I telephoned Ruddy from my office while he was in my office. I did not. I did not telephone Ruddy. Welchans was with him a part of the time when he was in my office. I

have known W. J. Burns for 20 years, or longer. I
766 had not seen him for a long time until one day after
he had been subpoenaed down here before the grand jury. He came into my office with his son Sherman. He said he was in town and just came in to pay his respects, and introduce me to Sherman. I came out and shook hands with them. That was during the week he was here as a witness before the grand jury, commencing November 7th. I had no communication with the Burns, either direct or indirect, about this affidavit before it was prepared. I could have found the Potomac Flying Field entirely from the description McMullin gave me. I had not talked with anybody who was connected with the Burns Agency, except Long, or McMullin, about drawing this affidavit, prior to the time it was drawn.

Thereupon **Thomas E. Lodge** was called as a witness for the respondents, and having been heretofore duly sworn in this cause, testified as follows:

On Tuesday, November 8th, there was a meeting in my office of Long, Ruddy, W. J. Burns and Sherman Burns. They all came into my private office. Long, or McMullin, did not stay in the anteroom. He was in the office during that entire conversation. They all went out together. On no occasion was McMullin left in the anteroom away from the Burns people and me. On that occasion McMullin described to me the Potomac Flying Field and drew a diagram at that time of the flying field. The diagram represented a large field enclosed by a large fence on the other side of the Potomac River on the road to Alexandria, where the road forks, one going to Alexandria, and one to the right over the railroad bridge, as I call it. The diagram showed a right-hand turn and an enclosed field in which there were—in the smaller part of the field two
buildings, one a hangar on the right of the field, and
767 one a sort of a club room or office rooms of the
executive of the company, over on the left of the field. And it was enclosed by a smaller, lower fence than the other. And between the two buildings there was a small, low fence which, of course, kept people away from the part of the field whereon the planes were being tuned

up, and so forth. There was an archway, he told us, over the gate as you go in,—over the opening as you go in. He showed us the location. I had him draw for me on this occasion the location of the automobiles, the exact place with relation to the buildings where the cars were parked; the place where the conversation which he mentioned took place, that being on the right-hand side of the field, somewhere near the hangar; the automobile which he was driving; the automobile which was known as the two-toned car was nearer the office of the flying field of the company. He was the first one to tell me about the two-toned car, bearing tag P-1758. He told me he got the number while riding down the street and put the number on a piece of envelope in which were enclosed auto tags, when his attention was first attracted to that car. Mr. W. J. Burns asked him where that paper was. He said, "I thought of all that before, where is the piece of paper, but I find that because these tags were on the floor of the car which was a hard surface, of course, and the boys getting in and out of the car rubbed off the number, and the paper is destroyed. This conversation was on Tuesday, November 8, in the forenoon. My recollection is that the press, on Monday, had reported that Lamb and Glasscock had testified that they had not been to the flying field. That is the reason I quizzed McMullin with reference to the accuracy of the report, and he said it was correct. He was absolutely positive about it. He detailed everything
768 about the field and the way to get these; went over the entire field minutely. At the completion of the conference when were present W. J. and Sherman Burns, Ruddy, McMullin and myself. McMullin asked the people assembled there whether or not he could get into trouble about these affidavits and his statements, and he was told by W. J. Burns, or Sherman Burns, or both that if he were telling the truth in his affidavits or statements he could not possibly get into trouble. I don't think McMullin said any more. He absolutely did not say or intimate that there was anything false about the affidavit. The one statement that I repeated that W. J. Burns said with reference to "where can you, or can you get the slip of paper

on which that number is written" was the first remark that Mr. Burns made during the entire conversation. I questioned McMullin again and went over the entire affidavit with him in order to learn whether or not we had set down in the affidavit correctly what had been said to Judge Wright and myself on that evening at Wardman Park, simply to confirm my own impression. McMullin, at Wardman Park when the affidavit was prepared, read it paragraph by paragraph before it was typewritten and after it was typewritten. I sat at the same table with Judge Wright when he drew the affidavit. He drew it in sections, paragraph by paragraph. On each occasion when it was brought back from the typewriter McMullin read it again, and read it before it went out to the typewriter. I knew Mr. Moore, the notary, by sight, but not personally. I did not see or talk to William J. Burns or Sherman Burns about the making of that affidavit. On the occasion of my talk with McMullin in my office I did not hear W. J. Burns tell McMullin that all he had to do was to stick to his story, or anything like that. I was never authorized or directed either by William J. Burns or
769 Sherman Burns or Charles L. Vietsch to deliver those affidavits to Justice Siddons. I hadn't talked to them. I am reasonably satisfied, although not positive, that it was W. J. Burns, and not Raymond or Sherman who I talked to by long distance telephone on Wednesday preceding the week, W. J. and Sherman Burns were down here. The subject was to the effect that the press was carrying at that time.

Thereupon the conversation was objected to as incompetent, irrelevant and immaterial.

Mr. Douglas: It is only for the purpose of rebutting any inference that the conversation of W. J. Burns had any reference to the affidavits, or any reference to his participation in the affairs of the Burns Agency. All I wish to do is to show what was the subject of that conversation.

The objection was sustained, and an exception duly noted, and the witness continued:

McMullin drew another diagram at the Wardman Park on the occasion of the drawing of the affidavit. It was in

detail, like the other one, and substantially the same. I had never heard of the Potomac Flying Field prior to either one of those occasions. Since this trial began I went down there to examine it with a view of seeing how it fitted in with his description. I found that the location of the things at the flying field complied accurately with the descriptions given by McMullin. My conversation with W. J. Burns on the long distance telephone was a week before Mr. Burns was down here before the grand jury. That conversation had no reference whatever to the McMullin or Long affidavit, and no reference to the conduct of the Burns Agency under the employment by Mr. Day. It did have reference to the newspaper articles then being published in the press that Mr. Burns thought were injurious to the Agency. When I went to the Potomac Flying
770 Field in Virginia, I crossed the 14th Street railroad bridge. This is a street railway track on that bridge. There is a street railway bridge a little to the left of that bridge as you go across to Virginia. There is a yacht club and a large number of boats congregated together on the left side of the bridge that you cross on the Virginia shore. The Potomac Flying Field is a half or three-quarters of a mile from the Virginia end of that bridge. As you leave the bridge on the Virginia end of that bridge there are two roads, one which goes to the left, which takes you into Alexandria; the other to the right goes up toward the radio station and passes the Potomac Flying Field. The entrance to the flying field is on the right-hand road.

Thereupon **Samuel M. Shortridge** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I reside at Menlo Park, California. I am Senator of the United States from California. I have known William J. Burns very well for about 20 years. I know his reputation in the United States for integrity and honesty and correct dealing. It is good. I would say excellent throughout the country. I have known him far and wide, in California for many years, and here, of course.

Thereupon **James E. Watson** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live in Rushville, Indiana. I am a member of the Senate of the United States, and have been for 20 years. I knew William J. Burns for a quarter of a century, and know him very well a good part of that time. I know his reputation in this country for honesty and integrity
771 and fair dealing. It is good.

Thereupon **George Higgins Moses** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am a member of the Senate from New Hampshire, and have been for 10 years. I am the president pro tem of the Senate. I have known William J. Burns for more than 10 years, and known him closely for about 5 years of that time. I know his reputation for honesty and integrity. It is good.

Thereupon **Lois I. Stuntz** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I was secretary to the late Admiral Bullard, Chairman of the Radio Commission, who is now dead. I am employed by the Federal Radio Commission. I know William J. Burns by sight. I remember Mr. Burns being in the office of Admiral Bullard sometime in the fall, but I cannot state offhand the exact date. He was there on business with Admiral Bullard. Mr. Dadswell of Florida was with him. They were there possibly an hour or two. To the best of my memory they were there only once on this business.

Thereupon **Lawrence G. Moore** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am managing director of the Wardman Park Hotel and the other hotels belonging to Mr. Wardman. I am a notary public. I remember a man named William V. Long swearing to an affidavit before me on November 5, 1927. (Witness was handed a paper). This is the same affidavit and my jurat. I remember the circumstances of the making

of this affidavit. He made it in one of the rooms of the hotel. I took steps to see to it that he understood
772 what he was doing before we swore to the affidavit. I was introduced to him by men that I know, and then I asked him, when he signed the paper, if he swore to it, and he said he did, and I took the acknowledgment. To the best of my knowledge he read over the affidavit, while I was there, and I asked him to read it. There were two affidavits at the time, one by O'Reilly and one by Long. I raised a question on one, I do not know which one. It was on two pages typewritten and I thought it ought to be on one, because it was going to be an attached paper, and I asked them why they did not put it on one sheet. It was retyped while I waited there in the room. I asked Long if the statements in this affidavit were true when he swore to it.

Thereupon it was stated by counsel that the affidavit which was rewritten was the O'Reilly affidavit.

Thereupon **Royal S. Copeland** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am a Senator from New York State. I know William J. Burns, and I know his reputation for honesty and integrity. It is of the highest grade.

Thereupon **Robert F. Wagner** was called as a witness for the respondents, and being first duly sworn, testified as follows.

I am a Senator from New York State. I know William J. Burns, and I know his reputation for uprightness, honesty and integrity. It is good. I am also a former Justice of the Appellate Division of the Supreme Court of the State of New York.

Thereupon **John Klein**, a witness heretofore sworn on behalf of the United States, was recalled upon behalf of the respondents, and testified as follows:

773 I heard Kidwell or somebody testify about Horan's bar room. I have never been near it, in it, or in that

vicinity in my life. On October 30, 1927 I was at my home in New York City. I left Washington on the 25th, Tuesday afternoon, and arrived in New York about 10 o'clock that night. I did not come back to Washington after that until November 8th, when I was summoned up here before the grand jury. I was in New York City between October 25 and November 8. I was not in Horan's on October 23rd. I commenced my work as an operative on the morning of October 19, and received my instructions from Ruddy that morning at the Union Station. Ruddy was in my room at the National Hotel about 11:30 or 12 that morning. Stewart, Long, Kirby, Hourighausen and I received our instructions there. O'Reilly was not present. To my knowledge he was not in Washington that day at all. I did not see him.

Thereupon the witness was cross-examined as follows:

I was in Washington on the 23rd of October.

Thereupon **Mrs. Eleanor Klein** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live in New York. I am the wife of John Kelin, who just testified. My husband was at home on October 30th. I know that because that day he stayed home all day and in the evening we went visiting. He came home from his work in Washington on Tuesday, October 25. He came back to Washington on November 8th. At present he is with the William J. Burns Agency.

Thereupon **Joseph P. Tumulty** was called as a witness for the respondents, and being first duly sworn, testified as follows:

774 I have lived in Washington since 1912. I was secretary to President Wilson throughout his eight years as President. That was the first time I came to Washington. I have known William J. Burns officially and personally and come into contact with him officially and personally since 1912. I know his reputation in this country for honesty and uprightness. It is very excellent I know his son, Sherman Burns. I have known him not quite as long as I have known his father. I know him

well. I know his reputation for uprightness, honesty and integrity. It is very good.

Thereupon **Philip Ershler** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am a member of this bar and have been for several years. I am associated in the practice of law with Judge Wright. I remember a man named William V. Long, or William J. McMullin. I saw him when he came to Judge Wright's office the first time. That may have been the same day or the day before the affidavit was made, which was November 3rd. I am not positive. I told him then that Judge Wright wanted him to make an affidavit. I am positive of that. I do not recall whether I saw him again. I saw him that day in the office. Judge Wright told me during the day that Mr. Long was coming in to make an affidavit to keep him there, that he would come back as soon as he got out of court. Mr. Long came in and I met him, the girl happened to be out of the office, and he stayed there for some time and got a bit nervous and asked me if I knew what Judge Wright wanted him for, and I said yes, he wanted him to make an affidavit, and then I told him to go in the library and wait, which he did. He waited quite a long time, and I think he left without seeing the Judge.

That must have been November 2nd, but I am not
775 positive. It was before the affidavit was made.

Thereupon the witness was examined by the Court as follows:

My impression is that I saw this man in Judge Wright's office talking with the Judge. I am in two or three times on one occasion, and someone was there, I do not know who, but I wanted to see the Judge myself. I looked into the Judge's office through the library, and I saw the Judge talking with Long, or McMullin in there. I do not remember whether that was on November 2nd or 3rd.

Thereupon **James M. Beck** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I live in both Philadelphia and Washington. I am a member of the House of Representatives and was formerly Solicitor General of the United States until 1925. During the time I was Solicitor General, William J. Burns was Director of the Bureau of Investigation. I have known Mr. Burns for over 30 years, and known him well. I first knew him when I was Assistant Attorney General under President McKinley and he was at that time in the Secret Service of the United States; and after I went to New York I knew him when he came to New York to establish his Agency. I know his reputation for integrity and uprightness and honesty. It is excellent. I have known his son, Sherman Burns for 15 years. I know his reputation for honesty and integrity. It is also excellent.

Thereupon **William J. Burns** was called as a witness in his own behalf, and being first duly sworn, testified as follows:

At the present time I live in Sarasota, Florida. I lived in New York City until October, 1927. I was appointed in the Secret Service of the Treasury Department
776 about 1890. I remained in that position until 1903, when I was transferred to the Interior Department, where I organized a group of special agents for the purpose of investigating the land frauds in California and Oregon. I was there from 1903 until 1906. Then I resigned from the Government, or rather, at first the Secretary of the Interior refused to accept my resignation and asked me to take a leave of absence, and I insisted on my resignation being accepted, and after a time it was. I took up an investigation of the graft situation in San Francisco from 1906 until 1909. It was a private enterprise by a citizens' committee of San Francisco. When I finished that I organized the William J. Burns International Detective Agency in 1909 and remained at the head of that until 1921. In August, 1921 I was appointed Director of the Bureau of Investigation of the Department of Justice and I resigned from there the latter part of 1924. Just before I resigned from the Burns Agency, I was president of the corporation. I resigned as president, and had no connection with the Agency whatever before I was appointed Director of the

Bureau of Investigation. When I resigned from the Agency my son, Raymond J. Burns succeeded me as president, and Sherman Burns succeeded Raymond as secretary and treasurer of the corporation. That relationship has continued until the present time. I had no position whatever, advisory or otherwise, with the Agency while I was Director of the Bureau of Investigation. I am now connected with the Agency in an advisory capacity whenever I am called upon by my sons to pass on any matters that they may be handling that they want my advice on. I do nothing whatever in connection with the activities of the Burns Agency unless I am called upon, and then it is only for advice. I became advisor to the Agency in 1925. I have a re-
777 tainer of $5,200 a year. Since I became advisor, I have not had an office in the Burns offices in New York, or anywhere else. I had desk room in 350 Madison Avenue as a licensed real estate broker. That has no connection, in location or otherwise, with the Burns Agency. I was not consulted, and did no work of any kind. In the Agency in 1927, that I remember of. I was in Florida from June until September. I was in New York in October, 1927. I was in the office of the Agency very, very seldom during the months of September and October. I was preparing to move to Florida. The offices of the Burns Agency in New York are at 165 Broadway. They had the same offices in 1927 and 1926. The Madison Avenue office was uptown, beyond 42nd Street. I had nothing whatever to do with the employment of the Burns Agency by Mr. Day in October, 1927, and knew nothing about it until it was all over. The first I knew of it was on November 1st, the day after the Burns operatives were subpoenaed before the grand jury, and after the search warrant was executed and the records seized. A newspaper man in New York called me on the telephone to inquire whether or not I desired to make a statement concerning the Washington matter. As I didn't know anything about any Washington matter in which they were interested, I inquired as to what it was and learned. That was the first time I had heard of the matter at all in any way. From the time of the employment on October 18th down to and including November 1st, I had had nothing to do with the matter and had no in-

formation concerning it at all. My advice had not been asked about it one way or the other. I had nothing whatever to do with the making or procurement of the Long or McMullin affidavit of November 3rd. I never knew about it until Saturday, November 5th. On that day Ruddy came from Washington to New York and visited my apartment in the Woodward Hotel that night with Sherman
778 Burns, and then for the first time I heard of the affidavit and the details of what had happened in Washington. The first time I ever saw the affidavit, or a copy of it, was in Mr. Lodge's office on November 7th, when I came here as a witness. I heard the substance of it at my apartment on November 5th. I had not seen Ruddy for almost a year previous to November 5th, nor had I had any communication with him by wire or letter or telephone during that period. I had no business with him whatever officially or personally. I heard McMullin's testimony. I did not give Ruddy instructions, or make of him a request of any kind that he should have McMullin, or any other operative, make spurious, fictitious or false reports on this operation. I first heard of the McMullin report of October 22nd from Ruddy on Saturday night, November 5. But I did not know that there was any false report made by anybody until the Saturday following my testimony before the grand jury. I did not know anything about it until I read in the press that Mr. Burkinshaw had made the statement that the man whom we knew as Long was really McMullin, and that he had been planted in the Agency. On November 7th, the day that I testified, Burkinshaw told me that he was going to show that we were entirely mistaken about Glasscock and Lamb being at the flying field. I testified before the grand jury on the morning of November 7, and Glasscock and Lamb testified in the afternoon of that day. I was subpoenaed to appear. The subpoena was sent to the Burns Agency in New York on November 5 and I was telephoned about it. I came down here on November 6 with Sherman Burns. When I testified before the grand jury I hadn't the slightest suspicion that there was anything wrong or untrue either in the reports of Long or in the affidavit of Long or in the reports of any of the
779 other agents. On the afternoon of the day I testified I first heard that Lamb and Glasscock had denied

before the grand jury that they had been to the Potomac Flying Field. I first saw and became acquainted with McMullin on the following day, Tuesday, November 8. Sherman Burns and I went to the Union Station to meet Ruddy who arrived with McMullin. Ruddy introduced me to him. I never at any time told McMullin that I wanted him to stick to his story, and that I would take care of him. When I first met him I asked him, "Mr. Long, can there be any possible question as to the accuracy of your affidavit?" And he seemed very much incensed at the inquiry and said, "Certainly not." Sherman Burns immediately asked him the same question. He said, "See here, now, Long, are you absolutely sure that your report and that affidavit is true?" And McMullin got very angry and said, "Of course, it is true. What the hell do you mean? Didn't I swear to it?" And then Ruddy felt that it was necessary for him to pacify this gentleman who got very angry at our inquiry. I didn't join in any conversation on the way up to Mr. Lodge's office; I listened to Ruddy and Sherman Burns talk to McMullin. My recollection is they told him that Lamb and Glasscock had denied that they had been to the flying field, and he replied, "Well, I can't help that." I think I said to him then, "Couldn't there be some mistake about your following this particular car? Didn't you get the wrong car?" He said, "No." When we reached Lodge's office, there again Lodge, Ruddy and Sherman Burns did most of the talking to McMullin, and while I was there listening to him Lodge had him draw a diagram of the flying field, which he did. I saw him draw it. I heard McMullin's statement that when he came to Lodge's office he was left in an anteroom and the rest of us went in another room. There is no truth in that at all. We
780 all went in. We were in there with Long. We knew him as Long then. He stated in this interview that when he was following this two-toned car, as he kept calling it, he took out his pencil and marked the number of the car on some paper in which was enclosed the District of Columbia automobile license. I immediately said to him, "Well now, that is important. You want to get that." He said, "Ah, I thought of that myself, and I look it up and found that the boys getting in and out of my car had rub-

bed it off with their feet, and therefore, it was destroyed." I was present when he was describing the physical situation of the flying field to Mr. Lodge. Lodge gave him a piece of paper and said, "No, just draw a diagram here of just exactly where the flying field is located and where you went, and where Glasscock went, and where this car was." McMullin then started to draw the diagram and completed it so far as Lodge wanted him to. At the Union Station, giving me an excuse to ask him if his report was accurate, I told him that he was going before the grand jury, and to tell the truth about it and not let Mr. Burkinshaw bamboozle him. I made the same statement at Mr. Lodge's office. Just after they got through this interview McMullin stood up and said, "Now, is there any possible chance of my getting into a jam over this." Mr. Lodge said, "You are telling the truth about it, and if you are telling the truth you can't get into trouble." I never on any occasion in any connection with this matter or any other, said to Long that I was going to take care of him, or anything that meant that, or anything of the kind. Long stated, too, that I congratulated him and told him I was proud of him. No such thing as that, or anything like it, ever took place.

781 He also testified that I instructed him to return to Philadelphia and get his car and come back to Washington, go in company with Ruddy to the flying field, look the lay of the land over, and also to get a look at Lamb's automobile; that I told him I was personally acquainted with the foreman of the grand jury who was also the Secretary of the Chamber of Commerce, and that this was not the only tight place I had ever been in, and if it came to a showdown I could depend on this man. Concerning my instructing him to come back with his car, and so on, Ruddy gave him those instructions, and I said to Ruddy at the same time and in his presence, "We ought to go to the flying field and see if he can find any person who could recognize his having been there the 22nd." Ruddy stated he was going to do that. I never gave him any instructions. I never said anything to him about the foreman of the grand jury, because I never knew the foreman of the grand jury until I saw him in the grand jury room when I testified there; never met him at all in my life, and never

had any business acquaintance with him of any kind. There is not a scintilla of truth in his statement, or any of his statements that he made concerning me except the fact that I did see him at the depot and was introduced to him. I remember talking with the newspaper men on Monday, November 7th. It was just after I came out from the grand jury and before I knew anything about Glasscock and Lamb going before the grand jury. I stated to them that these stories that had been emanating from the District Attorney's office, concerning myself and the Burns Agency were a tissue of falsehoods from beginning to end, and just as soon as we could get opportunity to go into a court of justice they would find that the Burns operatives had not done anything that was unlawful or illegal; that they had a perfect right to shadow a jury, because I knew that
782 the Government had been doing it for 37 years, although I never directed it in my life. I always got these requests from the District Attorneys. In the grand jury room I had asked Burkinshaw why they did not publish the report of H-36 of October 22nd, and he told me they did not have it. I stated to the newspaper men that it would seem from the reports that instead of the Burns operatives tampering with the jury that some person connected with the Government had done it, and I called attention to the report of L-36 and wondered why the District Attorney had not given it out for publication. I further stated that it had been handed to Judge Siddons. I heard that some time after it had been handed to Judge Siddons and after I came here on November 6th. A newspaper man then said, "You mean to say the Government has been tampering with the jury?" I said, "No, but it would seem as though a Government official was." At that time I had no suspicion that that affidavit contained false statements. I had no knowledge of the affidavit having been made at all until Saturday evening in my rooms at the Woodward Hotel, when Ruddy reported to Sherman Burns in my presence. I had no suspicion whatever that there was any false statement in the report of Long of October 22nd when I was talking to the newspaper men. I also stated to them that if any of the Burns operatives were found violating any law that the Agency would join with

the District Attorney in prosecuting them. I know nothing about the circumstances under which Long was employed by Ruddy in the Philadelphia office in September, 1927. When I first met McMullin, he was still going under the name of Long and was introduced to me as Long. I came to Washington on Wednesday, October 12th about 8 p. m.

in response to the telegram that has been read here.

783 I met Mr. Dadswell at the Willard Hotel and he and

I went to the Radio Commission's office and were there until noon. The young lady testified that we were there about an hour. We were there from 9 o'clock in the morning until almost 12 o'clock. We went to see Admiral Bullard with a view of having the broadcasting station of the Financial Journal, that was then located in Tampa, Station WJBB, transferred from Tampa to Sarasota. We were given that privilege and it was transferred. I left Washington the afternoon of the 13th on the Congressional, and returned to New York. I was not here on any other business than this radio business, and I did not transact any other business. I cannot recall everybody that I saw here on that occasion. I was with Elmer Dover after I got through with Mr. Dadswell, and remained with him until we both went to the station. He went west and I went to New York. I did not see Mr. Sinclair or Mr. Day while I was here, nor did I talk with either one of them. I did not talk with their lawyers or with anybody connected with the Fall-Sinclair case. I was not in Washington on November 3rd, nor was I here at any time during the fall of 1927 before I came here on the 13th on the radio business, which was the first time I had been here for months. I was not here at any time between October 13th and November 6th. I did not give Ruddy any instructions of any kind or character pertaining to this operation by telephone, letter, or otherwise. I did not give any instruction to any of the operatives in connection with the work. I had no conversation with Mr. Sinclair or Mr. Day in connection with the work done here in October, either before, while it was being done, or afterward. I had no part at all in making arrangements for the employment of the Burns Agency to do this

work. I first saw Mr. Day when this proceeding

784 started here on December 5th. I had never seen

him before we assembled in court on that day. I had

never talked with him before, nor had any communication with him before of any kind on any subject; no business talk with him, direct or indirect; no social or other kind of contact with him, direct or indirect, up to that day.

Thereupon the following occurred:

Q. Do you know whether or not there existed in the Department of Justice a custom, with respect to shadowing and observing of jurors in cases pending in the courts of the United States?

Mr. Gordon: Objected to.

Mr. Wright: Of observing jurors after they were sworn?

The Court: Sustained.

Q. Do you know whether or not there was such a custom?

Mr. Gordon: Objection.

The Court: Sustained.

Mr. Wright: I desire to note an exception, and I expect to prove, if the witness were permitted to answer, that he would say "Yes, I do."

Q. How long has such a custom been maintained?

Mr. Gordon: Objected to, if the Court please.

Mr. Wright: I desire to note an exception. I expect, if he was permitted to answer, that he would say "More than thirty years within my knowledge."

Mr. Douglas: Exception.

Q. Had or had not that custom been universal throughout the United States in the courts of the United States during that time?

Mr. Gordon: Objected to.

The Court: Sustained.

785 Mr. Douglas: Exception.

Mr. Wright: I desire to note an exception and wish to state that if the witness were permitted to answer he would say "It has been the universal custom."

Q. Is it not a fact, from your personal knowledge, that there existed in the Department of Justice a usage and custom to observe and shadow jurors in criminal cases, prosecuted by the United States, where there was no reason

to suspect a lack of integrity on the part of the jury, and the jury were unsuspecting of the fact that they were being shadowed?

Mr. Gordon: We object.

The Court: Sustained.

Mr. Hoover: We desire to note an exception.

Mr. Douglas: Exception.

Mr. Wright: Exception.

Mr. Hoover: I wish to say that if permitted to answer, and I wish to state as my proffer of proof that he would answer that he did know that such usage and custom existed in the beginning and that it covered more than a period of twenty-five years at least, and to the denial of the Court's permission to prove that, we note an exception.

Thereupon the witness was cross-examined as follows:

I have known Harry F. Sinclair a number of years and have done detective work for him for a number of years. The Agency was not employed by him in some capacity at the time the Pall-Sinclair case was being tried. I do not know Dorsey Hyde, foreman of the grand jury. I never had any business relations with him that I know of. I did not recognize him as having seen him in my life. I saw him in the grand jury room, of course. November
786 8th was the day on which I met McMullin or Long, for the first time. I had been before the grand jury the day before, and he was going before it on that day. I had a conversation with him prior to his going before the grand jury. The description and location of the flying field were discussed when we reached Lodge's office. That was the time McMullin asked me if there was any chance of his getting into a jam. The afternoon that Sherman Burns and I were leaving for New York, and Ruddy and McMullin were leaving for Philadelphia, Ruddy said that he had instructed McMullin to go to Philadelphia and get his car and bring it back. I said that it would be very important if he could go to the flying field and find some person who could recognize him as having been there on October 22nd. Nothing further was said about going to the flying field, that I recollect. I did not tell him to look around and see if he could observe the land marks. I never told him to

familiarize himself with all of the surroundings and land marks so that if he was asked about it he would know what he was talking about. My idea was to have him go over there and see if he could find somebody that could identify him as having been there on the 22nd. At the time I went into the Department of Justice my wife owned all of the stock, with the exception of three shares, of the Burns Detective Agency. She held that stock ever since the Agency was organized, and her money paid for the organization of the institution. I was never a stockholder myself, except when I held one share. I think somebody told me I had to hold a share to be president. I think I talked to Long after that afternoon that Ruddy and Sherman Burns met him at the station. I may have. I did see him from Tuesday when he came here until Saturday, when we found out positively
787 that he was McMullin. I came back to Washington again and saw him here after he was told to return with his car and go to the flying field. I think I came back the next day, or a day or so later.

Thereupon the witness was examined by the Court as follows:

When I had my talk with Mr. McMullin on November 8th, the truth of the affidavit or that report had not been challenged, except that Glasscock and Lamb went before the grand jury and stated that they had not been to the flying field. It was then, in view of that information as to their testimony to that effect, that I considered it important that the supposed truth of this affidavit should be clearly demonstrated. I wanted to know how he could possibly follow these men there when they stated they had not been there. On the Saturday night preceding my coming here and this interview of the 8th, Ruddy had communicated something to me in New York, at my rooms in the hotel. At this time the truth or accuracy of the affidavit was never questioned. The first intimation or information of any kind, from any source whatsoever, as to the alleged falsity of this report of October 22nd, and the affidavit of November 3rd, was the information to the effect that Lamb was not present in that car and that Glasscock had not been to the flying field. Then, for the first time I began to interest myself in seeing whether it was true or not.

Thereupon **Charles G. Ruddy** was called as a witness for the respondents, and having been previously duly sworn in this case, testified as follows:

I heard the testimony of McMullin. I remember his testimony to the effect that he received instructions from me in the hotel about 11 a. m. on October 19, in which I told him to make two false reports, on the 19th and 20th. I did not at that time, or at any time, direct or advise him
788 to make false reports or false statements in the reports. I was neither in the room at the Harrington Hotel or in the Harrington Hotel itself at any time on October 19th, and had not been for 5 years. At 8 a. m. on the 19th I went to the Union Station with Robbins. Robbins was with me the entire time from 8 a. m. until the lunch hour. I saw McMullin that day at the National Hotel in Klein's room. Robbins, Klein, Hourighausen, Kirby, Stewart, Long and I were present. I there gave these operatives their instructions. I also talked to Long at 8:30 a. m. at the Union Station. The 4 men from New York, the 3 men from Philadelphia, and Robbins were present. Outside of those two times I did not talk to him that day. Until after this case was completed I had no private talk with McMullin at any time except the first day he made his application to be employed by the Burns Agency, which was September 30th. Not one. I heard his statement that I had told him to put those false statements in his report of October 19. That is an absolute lie. Between 1 and 1:30 on the morning of the 20th, in company with Robbins and O'Reilly, who had arrived late the night of the 19th, I visited all the operatives to get their reports if possible. About 1:30 the 3 of us arrived at the Harrington and saw Stewart and Long. Their reports were not ready. Long and his subject had been in company with a man in a building at 11th and Pennsylvania Avenue. He said he did not know the name of the building or the street number, but it was a big, gray building. I instructed him to identify the building, by name or number, the first thing the next morning before he completed his report. Robbins, O'Reilly and I left the Harrington, walked down to 11th and Pennsylvania Avenue and identified the building as possibly being the Post Office Building. The report of the 19th was col-

789 lected the next morning by O'Reilly. It was not handed to me as stated by Long. And at no time did I give him any instructions to have this subject reading a newspaper as he testified that I did on the 19th. At no time did I ever make any suggestions to him of any kind or character about what he should put in his reports. He testified that on October 23rd I told him to put Glasscock out for a sleigh ride. On October 23rd I was in Philadelphia during the afternoon and evening and returned on the morning of the 24th. He testified that on the 26th in the Harrington I instructed Stewart to return to Philadelphia and told him, McMullin, to stay around and that I would see him later. And that I was accompanied by O'Reilly. O'Reilly arrived here between 11 and 11:30 p. m. on October 19th. Robbins gave Stewart the address of Juror Kidwell, the man he was to shadow. I handed it to Robbins on a slip of paper and Robbins handed it to Stewart, just the same as I did to all the other operatives. That occurred between 11 and 12 o'clock at the National Hotel on the morning of the 19th. Stewart went about shadowing Kidwell and saw me on the evening of the 22nd. I neither saw nor heard of him that evening. I had nothing to do with the making of McMullin's report of October 22nd. I gave no instructions for any of the matter in that report to be put into the report, and I believed it to be absolutely true up until after the mistrial of the case. Up until November 12th I had no reason to believe that McMullin had faked and falsified that report, and I accepted it as a fact although Glasscock and Lamb testified on the afternoon of November 7th that they had not been to the flying field. I remember meeting W. J. and Sherman Burns at the station on the morning of November 8th. I heard McMullin's testimony of the conversation he said took place on that occasion. What actually took place

790 was this. I introduced Long to W. J. and Sherman Burns. W. J. Burns asked him if he was sure of the facts in his report. He said it was absolutely true. Sherman Burns also asked him if he was quite sure of all the facts and the details of the report. He got indignant and stated that they were absolutely true. He said, "If they had not been true I would not have sworn to them. I made an affidavit to that effect, didn't I?" I saw that he was a little indignant, and said to him, "Well, now, of course

you can understand that Mr. Burns wants to be sure that you are sure of the facts of that report and affidavit." Robbins was present at the station and I turned my grip over to him to take to Wardman Park. W. J. and Sherman Burns, McMullin and I got in a cab and went to Lodge's office. The conversation there was as W. J. Burns testified this morning. At no time did McMullin remain in the anteroom. We all walked together into Lodge's private office and left there together, and came over to the court house together. McMullin did not spend as much as a minute there by himself. His testimony that I told him going up in the elevator to let the two Burns do the talking in Lodge's office is absolutely without any truth at all. Lodge did most of the talking with McMullin. We all entered in the conversation to some extent. I saw McMullin draw his diagram of the flying field. I have never been to the flying field until 3 weeks ago (January 24). He testified that I gave him all the material to put in that report. That is absolutely untrue. I did not know that such a place as the Potomac Flying Field existed. He described in detail this flying field to Lodge so accurately that I could have gone there without asking any directions from anybody. I found that out after I visited it 3 weeks ago. I have no idea how the numbers of these 2 cars belonging to Lamb and Glasscock got in to the report of the 22nd. They ap-
791 peared in Long's report and we thought that he had seen these 2 cars going and operating in the way he claimed or stated in his report. He stated that the reports were absolutely true and the reading of the reports show how he got the numbers. He stated he got the number of the two-toned car, P 1738, while he was following it and before he reached Glasscock's home he reached down and put the number on the envelopes that contained the District of Columbia License Tags. W. J. Burns immediately said, "That is very important. Have you still got that envelope with the tags in?" He said, "I thought of that, Mr. Burns, and I looked for it, but some of the boys have gone out in the car and their feet have obliterated the numbers off the envelope." And Mr. Burns said, "Well, that is unfortunate because that would have helped to just substantiate your report." From October 18 to 24 I was in apartment 106 and 108 F at Wardman Park. From that day on I was in 111 and 115 E. McMullin testified he had a conference with

me at Wardman Park on the 20th and 21st. He was never in Apartment 106 and 108 F at any time. I took the following steps with reference to Lamb and Glasscock because of the statements contained in the report of October 22. On the morning of the 23rd, before I went to Philadelphia, O'Reilly brought the report to Wardman Park, and I read it. Robbins gave the license numbers that were in the reports to O'Reilly, who was instructed to go to the License Bureau on Monday morning. It was the usual routine for him to do that, to find out whose names the cars were registered in, and to take with him 2 men that were available to check the ownership of the licenses. I did not know until afterwards that McMullin had also accompanied O'Reilly to the License Bureau. It was sometime Monday evening, the 24th, that I first found out that the number given
792 in the report of October 22 was that of Lamb's car. I came back Monday morning, after it had been looked up. Not until Tuesday did I find out who Lamb was and what his official position was. I then took steps to shadow Lamb. On the 25th I instructed O'Reilly to go to the home of Lamb the next morning, the 26th, and try to pick him up as he left his house. I talked the matter over with Day when he got these reports, and it looked so suspicious that Day was very much concerned in the matter, and O'Reilly took the description as given by McMullin in his report, and was sent down to the vicinity of Lamb's house, and I told him that if Lamb went to the Department of Justice building to call me up, and I myself would go down and pick up the surveillance. O'Reilly called me between 9:00 and 9:10, the morning of the 26th, and said he had placed Lamb in the Department of Justice building. I went right down and met O'Reilly about 9:30. O'Reilly stayed with me until Lamb came out to go to lunch between 12 and 1. I then took him under surveillance and followed him to the Racquet Club. I waited outside. When he came out I followed him back to the Department of Justice Building. O'Reilly rejoined me between 3:30 and 4:00 with a car. Shortly after that Lamb came out and we followed him. He walked to his house and entered, and we drove around the block, and as we came down the side street we saw him coming out of the alley back of his home in his car. We followed him until we reached the bridge going to Wardman Park, where I

dropped out of the car and instructed O'Reilly to continue the surveillance. O'Reilly tried to pick him up the next morning and did not succeed. We learned later that Lamb had gone out of town. I first got the information about Burr from the report of the 19th of Long's relating the incident of the man connecting up with Glasscock
793 and going to that building, which was identified later as the post office building. When I first saw that report I had no idea who it was. It contained the number of Burr's car. I think it was the 20th that I found out the car belonged to Burr. We took steps to shadow and observe Burr after that, and to get a complete line on him. I do not know how many reports we had on him. Sullivan worked on one end of it for a while, and Steer shadowed Burr for 3 or 4 days. That was done solely because of the statement in the report of McMullin, and under the instructions of Day. I did not know the report of McMullin was false. If I had known, it would not have been necessary for me to shadow Burr. I cannot emphasize too deeply an absolute denial to the statement of McMullin that I suggested or requested or directed at any time the insertion into any of McMullin's reports any false or fictitious statements. I never suggested any statement of any kind, either false or true, to go into his reports. The circumstances under which I employed McMullin on September 30th are as follows: On September 30th McMullin or Long came into the office and asked to see the manager. He was shown into my office. He stated his name was William V. Long, that he had been for over six years or near six years on the Jersey State police, that he had been employed as an investigator by the London Guaranty & Accident Company, and had been in the service, and I stopped him and said "Well, Mr. Long, we will give you the usual applications to fill out; bring these back with three small pictures of yourself, and then we will go further into the matter." Mr. Long came back the same day. I was busy at the time, and he sent the applications in by the telephone operator, and I told her to tell Mr. Long—he said he wanted to see me—I could not see him then, but
794 we would check his references, and for him to come back in two or three days. Mr. Long called up the next morning and asked me if I got the applications, and I told him I had and was checking his references. Three or

four days later he came in. I was just going out, and all his references had not been heard from, and he walked down the hall with me, and I said "I see you have been in the Army, Long," and he said "Yes." And I said "Have you got your discharges?" And I said "What branch were you in?" And he said "The Marines," and he pulled out army discharge papers. I just glanced at them and handed them back and went on to the elevator. They were certainly in the name of Long, and they were in the Marine Corps, I think, and two days later we employed Long. I personally did not use him on any work in the Philadelphia office. I called up over the phone—I was in need of men at the time—and I called up over the phone and talked to two officers of the New Jersey State Police, who gave Mr. William V. Long a very good recommendation and stated that he was an excellent man and that he had held the rank of sergeant, and that he was very well regarded, and that his record was clean. He went on so far as to tell me, they asked me if I had been aware that the Croix de Guerre had been awarded him by the French Government, and they gave me quite a detailed history as far as they knew it of Long. I did not suspect at all that that was not his real name. I was not in charge of the Philadelphia office in July, 1925. I first went to the Philadelphia office the day after Labor Day, 1925, for 3 months, when I was travelling manager for the Agency. I was not there at the time McMullin applied for employment on July 28, 1925.

Thereupon the following occurred:

795 Q. You have seen the paper we have used here in cross-examining the witnesses, the one with the finger prints on it, dated July 28, 1925. Can you tell the Judge or the Court where you found that paper?

Mr. Gordon: I object to that, if the Court please.

Mr. Douglas: For two purposes, really. One purpose is to show that the statement made by McMullin is absolutely false, and, secondly, for the purpose of showing the circumstances under which this man was employed, and he testified himself he made two applications, and I think we have got a right to direct our examination in reply to the Government's case in chief to the things that they de-

veloped. It may be that this application, not being the one under which he was employed, it may be that it is a collateral matter; but as it goes to the credibility of this witness, to the bias and prejudice which your Honor has commented on in connection with other phases of the case. I think we have a right to show McMullin's bias and prejudice, and to show any other respects wherein his credibility is far below par. He testified that he made an application there, and he testified he did not make this application, Exhibit No. 14. He testified he did not make these finger-prints, and the Burns people, besides contradicting and impeaching this man and showing his bias and prejudice, I wish to show all the circumstances under which this man sought employment first and failed, and got employment in another man's name afterwards and succeeded. I do not see how you can extract from this case, or how it can be extracted from this case, the circumstances under which Long or McMullin first sought without success and subsequently sought with success to get himself within the fold of the Burns Detective Agency.

The exception was sustained and an exception duly noted, and the witness continued:

I searched the records of the Philadelphia office
796 to ascertain if Long had theretofore made any other application.

Q. Will you state to the Court how you connected up the application of July 28, 1925, with the application of September 30, 1927?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Douglas: At the suggestion of Judge Wright, which I think is a good one, I now offer to prove by this witness that the paper which I hold in my hand, marked "Respondents' Exhibit for Identification No. 14" was found among the records of the Burns offices in Philadelphia, and it was then taken from those files and brought here, and is the identical paper there found, in the name, of course, of William J. McMullin. I understand your Honor rules that out, and we note an exception.

Mr. Wright: Mr. Day also reserves the same exception, and makes the same offer of proof.

Mr. Hoover: We join in that also, and note an exception, for Mr. Sinclair.

Respondents' Exhibit 14 for Identification is attached hereto.

Thereupon the witness continued:

The following is what I know of the William V. Long affidavit dated November 3, 1927: On the evening of November 1, Mr. Day called me and said that an attorney by the name of Judge Wright was going to call to see me at my hotel. Just prior to that, however, Judge Wright, himself had called me and told me that he was attorney for Mr. Day and would call to see me. Later that day Judge Wright came to my apartment and asked me where L 36 was, who made a report on October 22. I told him to call the Philadelphia office and get in touch with
797 the acting manager, B. T. Uren. Judge Wright also requested that O'Reilly see him at his office at 4 p. m. on the 2nd. About 5 p. m. on the 2nd O'Reilly called me from Judge Wright's office. After talking with O'Reilley I called the Philadelphia office and asked the acting manager if Long had proceeded to Washington as had been requested. Then I asked him to get in touch with Long and have him come down to Washington the next day, the 3rd. Long arrived at Wardman Park between 5 and 6 p. m. on the 3rd, accompanied by Welchans and O'Brien. Lodge arrived and I learned that Judge Wright was coming to my apartment to have the affidavits that he wanted, made there. Long and others went out to dinner, and returned. At no time did I have a conversation with Long alone. When Judge Wright arrived he took my place near the table that was in the center of the room. Judge Wright correctly described the making of that affidavit during the time I was there in the room. Due to a conversation I had with Judge Wright late on the night of the 2nd, I called Sherman Burns and asked him to send the report of L 36 for October 22nd down by a messenger the next day. McMullin testified I spoke to him near the court house, or in the District Attorney's corridor on the afternoon of the

2nd about a report of the 22nd being brought down by a messenger. No request had been made to me until late on the night of the 2nd to have that report brought down here, and at no time on the 2nd did I see McMullin. That report was brought down at the request of Judge Wright. I did not tell Sherman Burns what the report was to be used for. The report was here on the night of the 2nd, brought down by a man that has since died, Martin Shumaker. At the time of the making of this affidavit on the night of the 3rd I had absolutely no doubt concerning the integrity or accuracy of this report of October 22nd,
798 when the affidavit was drawn and signed and sworn to by McMullin. I did not request him to make that affidavit. I did not tell him that W. J. Burns wanted either the report of October 22nd or the affidavit made based thereon for the use of his clients. W. J. Burns never requested me, suggested to me the making of that affidavit. I had not spoken to or seen W. J. Burns since the previous February. Sherman Burns did not make the request, or suggest that request or statement. Nor did Mr. Vietsch. Even when Glasscock and Lamb testified on November 7th I did not suspect that the report was false. I thought McMullin might have been mistaken, but I did not suspect it was false. I saw W. J. Burns on the evening of Saturday, November 5th, at the Woodward Hotel in New York. That was the first time I had seen him since February, 1927. I had not communicated with him at all in any kind of way between February and November. I didn't even know his whereabouts. W. J. Burns and Sherman Burns were present at that conversation at the Woodward Hotel. Up until that time neither W. J. nor Sherman Burns had seen that affidavit of Long. They could not have seen it. I do not know who gave Mr. Burns a copy of the Long affidavit, or when and where it was done. On November 7th there was a copy of it on Ledge's desk. The testimony of McMullin on the making of this false affidavit and the making of these false reports is a tissue of his from beginning to end. I did not have or receive from anyone the license numbers of automobiles except from the operatives themselves. McMullin testified that in his first conversation with me on the morning of October 19th at the Harrington Hotel

I had a number of automobile license numbers then. That is absolutely untrue. I detailed 2 men to Glasscock and had a camera purchased by one of those men, Merritt.

799 McMullins testified that on October 29 I instructed him to return to Philadelphia because something was going to break over the week-end. That is absolutely untrue. On October 29 it was brought to my attention that he had excessive automobile charges in some of his reports, and I told him he was through in this case, and for him to return to Philadelphia. I arranged to assist Mr. Burkinshaw in every way possible to get these men placed under subpœna to appear before the grand jury. And I told Mr. Burkinshaw that if he would send the subpœnas up to the Philadelphia office that it would not be necessary to have the marshals locating the men that had worked on the operation here in Washington. They were sent from the marshal's office to the Philadelphia office, and Saturday I informed the Philadelphia office that I would be in Philadelphia Sunday evening. I left New York around three o'clock and arrived in Philadelphia about 5.30, and I had instructed Mr. Uren, the acting manager, to have the men who had worked on this case in the office that evening, which he did. I met Knowles, Stewart, Sullivan, and Long in the Philadelphia office, as stated by Long. That is correct. I at no time talked to Long alone. That statement of his, that I called him into my private office, is incorrect. I asked them if they had all gotten their subpœnas for the ninth. They replied that they had. My only advice —it was not instructions—was to appear before the grand jury and answer every question that they were asked, telling them that in our opinion we had done absolutely nothing wrong in shadowing the jury, and that they need not be apprehensive at all regarding the matter because we believed we were clearly within our rights in doing what we did.

I did not state to McMullin, or intimate to him, or any other operative, that they should tell anything else

800 than the truth in this matter. McMullin came here on November 8th when he was summoned to be here on the 9th, because on the afternoon of the 7th, after Glasscock and Lamb had appeared before the grand jury, Burkinshaw came to me and told me that Lamb and Glasscock

had denied being at the Potomac Flying Field on the 22nd and said he wished to have Long down here the next day, and asked me if I could assist him in getting him here. I said that I was going to Philadelphia that afternoon and I would be glad to bring Long down with me the next morning, which I did. Neither the Burns Agency nor I had anything whatever to do with King or Akers in connection with this operation. I never heard their names until I read them in newspapers in connection with the affidavits. The work that I was directed to do down here or to direct down here did not include any work other than the mere shadowing of the members of the jury.

On the 19th of October, about 11 a. m. in Room 113 at the Harrington Hotel in this city, I did not state to McMullin that this was a nice job here on this case, and that he, McMullin, was to keep his nose clean, and not to take any instructions from any of the other men or talk to them, but to take his orders from me alone. At that same time and place I did not give him automobile license number P 993, nor did I take such a number from a list of other numbers, about a dozen in all that I had in my hand. On this occasion I did not tell McMullen to put Glasscock into the Post Office. On that occasion I did not tell him that the jury had been charged by the Judge not to talk about the case or read the newspapers, and that the first opportunity he got I wanted him to have Glasscock reading a newspaper. I made no such statement. I didn't know what the Judge's directions to the jury were. On October 22, 1927, at or about
801 11:00 a. m. McMullin did not call me on the telephone at Wardman Park and tell me that he had Glasscock in his place of employment, and I did not then, or a few minutes thereafter, go to the Harrington Hotel and there meet McMullin. I did not, on October 22nd, at the Harrington Hotel about 11 a. m. tell McMullin that somebody had gone wrong in the case the day before, and that it looked very bad for Sinclair. I neither made that statement, nor heard nor saw McMullin that day. On this occasion I did not have a list of automobile numbers with me, nor did I tell McMullin to mark down automobile license numbers U 302 and P 1738, nor did I tell him I wanted him to put the owner of automobile P 1738 in conversation with Glasscock. On that occasion he did not tell me that

he did not know much about the park, and that then I went out of the room. It is untrue. I was not in the room. On that occasion I did not tell him to put the owner of car P-1738 in conversation with Juror Glasscock at the Potomac Flying Field. On that occasion I did not say to him that this stuff, meaning thereby contact between the owner of car P-1738 and Glasscock, would be used for a mistrial, but in all probability it would not have to be used, as it would not be needed. No such conversation occurred. On this occasion I did not say to him that Sinclair was going to spend plenty of money to get out of this, as he had to, and that I also felt that no Deparement of Justice agents were trailing these men. On this occasion I did not say to him that Glasscock was a man who talked too much and that he was a man that I was afraid to trust. On October 26 at McMullin's room in the Harrington Hotel, I did not say to him, McMullin, that the government had $100,000 to spend on the jury, and that Sinclair was going to spend $200,000 on the jury. I made no such statement. I was not in the
802 Harrington Hotel on the 26th. On October 29th at the Wardman Park, as McMullin was about to proceed to Philadelphia, I did not tell McMullin that something was going to break in the case over the week-end. I never instructed McMullin to pad his expense account and defraud Mr. Burns of his money in that manner. When I found it out I sent him back to Philadelphia. I did not, on October 20th, or on October 21st, tell McMullin to put Juror Glasscock out for a ride, the night of October 21st, and to put him for a ride of about 25 miles. I made no such statement. McMullin, in connection with his report of October 21, concerning the alleged movements of Glasscock, did not have a conversation with me in which the supposed place known as Monmouth, Maryland, was mentioned. He did not tell me that there is no such place as Monmouth, Maryland, either on the 21st or 22nd of October. I did not tell him to make a false charge against Mr. Burr for an automobile ride of 78 miles in his report of October 21st. I did not tell him, at Wardman Park, concerning his report of October 22nd or 23rd, to put in a false charge of 25 miles of automobile travel. I recall McMullin's report of the supposed activities of Glasscock for October 23rd, when he was supposed to have gone down to Marlboro, Chesapeake Beach and to Annapolis. In connection with that

report, McMullin did not say to me, at Wardman Park, either that evening of the 23rd or on the 24th of October, that Glasscock left his home and he followed him but lost him in traffic near the Public Library on K Street, and I did not then tell him to remain on the job, and later he did not tell me that he missed some good mileage by losing his man in traffic, and I did not then tell him to put in a charge of mileage anyhow and authorize him and direct him to put in a false charge of $20 against Mr. Burns with
803 reference to that report. No such thing as that ever occurred. He testified that I did that over the phone on the evening of the 23rd. No such conversation occurred. I was in Philadelphia then. I did not tell him to take Glasscock out for a ride and then authorize him to put in a false charge of $20 in his report. I did not, on October 26th or 27th, have a conversation with McMullin while I was in an automobile, in company with O'Reilly, near the intersection of LeRoy Place and Connecticut Avenue. That was the day that O'Reilly was shadowing Lamb. On that occasion I did not tell McMullin to put Glasscock out for a ride so as to enable him, and authorize him to make a false charge against Mr. Burns for expenses. At no time did I make any such statement to him or give him any such direction. I did not, in connection with the report made by McMullin of his operations of October 27, authorize him to make a charge, or direct him or request him to make a charge for 63 miles of traveling, when he had, in fact, only travelled 5 miles during that day. That was one of the reports on which account I sent him back to Philadelphia. I sent him back to Philadelphia because in my opinion he had padded his expense account and was defrauding the Burns Agency by making false charges for expenses. I did not hear W. J. Burns say to McMullin, either at Ledge's office or in the corridor upstairs or on the way to the station, or at the station, to "stick to your story." I never heard Mr. Burns say he would take care of McMullin. He made no such statement during the time I was present, and I was present all the time so far as I know. I never looked up, nor did I ever ask any one else to look up, the ownership of an automobile license number, unless I got that number from a report of some operative.

A camera was purchased at Mr. Day's request. It was in connection with the Glasscock-Lamb incident;
804 and, believing Long's report was true, and that there might be a possibility of this juror and Lamb getting together again, if that occurred we wanted to get a picture showing them together. I think it was my suggestion that we put 2 men on the case. There was a discussion between Mr. Day and myself about putting 2 men on the case, and it was agreed to finally between the 2 of us, that 2 men should go on the job instead of one.

Thereupon the witness was cross-examined as follows:

I could not say I gave Long about $580 for less than 10 days' service here. I should not think we did. He had his own car and there was the upkeep of that. The men were advanced money as they needed it, and settlements were made after they discontinued on the case. Long still had some money coming to him after he returned to the Philadelphia office. I do not know what he was paid. The first day I came to Washington I went directly to Day's house. McMullin did not draw $560. The amount of money he drew during the time he was here was $200 advance money, and his total expenses, including hotel, car hire, railroad fare, subsistence and everything, and salary was $351.42. They made a settlement on that basis when he got back to Philadelphia from this job. He did not get over 350 odd dollars. I have checked the records of his time and total expenses. I personally gave him $200, at different times and in different amounts. I first gave him about $50 after he had been here 3 or 4 days. It must have been before the time of the flying field episode. I do not know when I gave him the next amount. It was around $50. I consulted the records, but not as to the dates. I think he received $50 when he left, but that is not in the record, because it was in a new financial week, and the reports had not been made up. On October 19th I had not been to the Harrington Hotel
805 for 5 years. I was there the morning of the 20th, that was the first time, and the morning of the 21st. To the best of my recollection I did not go there again that week. I was not there the morning of the 22nd. I was at Wardman Park with Robbins that morning. Also Mr. Day came to Wardman Park that morning. I must have gone

out of the hotel that day, but I did not go to the Harrington Hotel, I am sure. I cannot remember whether I went to the Mayflower that day. I was there the previous night and the early morning of the 22nd, which was the night of the meeting at the Mayflower. I saw McMullin there that night, and all the other men at different times. I was not there the next night, the 22nd. I was at Wardman Park. I did not call that meeting that night. The night of the 21st was the meeting. I did not call that one.

Thereupon the following occurred:

Q. Now you are sure you were not there at the Mayflower at any time the next night; that is, the night of the 22nd and 23rd?

The question was objected to as not proper cross-examination, the objection overruled, and an exception duly noted; and witness continued:

I was there only one night. There was only one meeting. There was not any on Sunday night that I called. I was not in McMullin's room on Saturday night and Sunday morning and met a number of the operatives there. I was at W. J. Burns' apartment at the Woodward Hotel the night of November 5th. I arranged with Sherman Burns over the phone to meet him there. I met him there, and W. J. Burns. The matter of the affidavit was discussed. On Sunday, October 23rd, I left for Philadelphia on the 1.05 p. m. train and returned Monday between 5 and 6 a. m.

I am sure it was Sunday and not Monday that I left.

806 You will find the report of my expenses on Sunday, the 23rd. I saw O'Reilly the morning of the 23rd when he brought the reports to Wardman Park. I don't know the exact time. I remember on November 8th that Mr. McMullin went before the grand jury and when he came out of the grand jury room I met him in the hall and then had a conversation with Burkinshaw. I did not ask that McMullin be excused so he could go back to Philadelphia as I had an important job for him there. I did not ask if he could go back to Philadelphia as he had not brought a bag with him. Burkinshaw said, "Will you promise to have him down here any time we may want him? I assured him we would. Later in the afternoon, however, Burkinshaw said

he wanted every man that had been on the job here, the next day, the 9th, including Long. I don't know what McMullin was working on in Philadelphia, because I was not there, but in Washington. I didn't ask Burkinshaw to let him go back because he was on an important job. Sherman Burns was present at the time. I went from Wardman Park to the railway station on October 23rd by taxicab, as near as I can remember, McMullin didn't drive me there. I did not see him on October 23rd. (Witness was handed his reports of October 23rd and 24th.) I went to Philadelphia on October 23rd. My report of the 23rd reads: "Continuing on above I was engaged from 8 a. m. until M. N. (midnight) directing the operation. Time 1½; hotel, 6.00; meals, 4.30; Taxi etc, 5.80; 16.10." My report of Monday, the 24th, reads "Continuing on above I engaged from 7:30 a. m. directing the operation. It was necessary to proceed to Philadelphia to connect with other phases of the case. I discontinued at 3:30 a. m. Hotel, 6.00; Meals, 4.55; Railroad fare Philadelphia and return, 12.06; Taxi hire, 8.80; Long distance calls, 2.70; local calls, 1.40; two days, 35.51." Those reports are not inaccurate.
807 The days might have been transposed. They might not have been made up for 2 or 3 days. They are in my handwriting.

Thereupon the witness was further examined as follows:

All the operatives were paid on the same per diem basis. The time allowed each man was the same for each man; of course, their expenses would differ. Long was the only man who had his own car with him. He was allowed an amount for the use of his car on a mileage basis. There was absolutely no exception in his case from anybody else. He received no more than any other man. When I first saw Mr. Day when I was arranging to take charge of this employment, he told me he wished us to shadow the jury as there might be, in his opinion, some attempt by someone to reach the jury.

Thereupon the following occurred:

Q. Did he state to you whether or not he thought that some of them were already being shadowed?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness, if permitted to answer, would answer yes.

Thereupon the witness was examined by the Court as follows:

I went to Philadelphia on Sunday afternoon, October 23rd. I was not engaged from 8:00 a. m. on that day until midnight directing this operation in Washington. The best way that I can explain that is that I think I transposed the days on the two reports. There is evidence in the date of my report of October 24th as if I had first written October 23rd. On that report, in pencil, is the word "Sunday." That is not in my handwriting. On the report of the 24th is the word "Monday." That is not in my handwriting.

I did not put it there. Robbins wrote those words.

808 On the margin of the report of the 24th are the words "Two days" in pencil. That is not my handwriting. I think Robbins wrote that. Sometimes two or three days elapsed before I made up my report. When McMullin made his application to the Philadelphia office in 1927, I required him, before going further in his application, to bring in to me several small pictures of himself. We do that in every case. The delay between the date when he first made his application and before I finally acted on it, was caused by checking up the references he gave me. Unfortunately, in checking up his references, I did not make use of those photos. It is not the custom to do so. We investigate very thoroughly an applicant's antecedents, with the exception of sending out the picture. Long, or McMullin, was checked up thoroughly. I had a written application of this man in duplicate, before me, in which he gave me certain references, among other things, in the nature of informing me of his prior employment in different places. We do not make use of these photos in checking up the records. I was present when McMullin made this affidavit. I didn't take any hand in having it made, though. I did not have a copy of it when I went to New York. I simply told Sherman Burns an affidavit confirming the report of Long of October 22nd had been made, and I communicated to him from memory the contents of the affidavit. I didn't go to New York especially to confer with

Sherman Burns regarding the affidavit. I went to New York to confer with him regarding others of the proceedings. The affidavit came up in the conversation only incidentally. I think Sherman Burns brought it up. So far as I know, he was informed of it before I arrived there. I ordered McMullin back to Philadelphia on October 29, because I had become convinced that he padded his
889 expense accounts on the 26th and 27th so far as automobile mileage was concerned. In one report he showed a charge of 66 miles when it was very evident he had not travelled more than 10 or 15 miles, from the contents of the report. I believed the contents of the report were true, and there was an excessive charge for automobile hire. In my opinion he had padded his account of the 27th about 50 miles. I told him that that was the reason I was sending him back. As far as I know, I think he went back to work when he arrived in Philadelphia.

Thereupon **William H. Goucher** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I reside at 1408 Franklin Street, N. E., and am employed at 1641 14th Street, N. W. I was one of the jurors in the Fall-Sinclair Case. I became a juror on October 18 and was discharged on November 2. At no time during the 23rd day of October was I aware of being followed or shadowed by anyone whatever.

Thereupon the witness was cross examined as follows:

I am employed by the Kenworthy Company. On occasions, I take home a truck of the Kenworthy Company bearing on the side the name of the company. On October 23rd I had a truck belonging to Kenworthy and bearing his name on the side, with me at my home. During that day I did not leave my house at any time, using that truck. I probably left home some time in the day, but not in a truck. I left the truck in the garage. There is no other employee of Kenworthy's who lives in my neighborhood. I have two of Kenworthy's trucks in my garage. One we use and the other one has been used once in two years. That one was not used on October 23rd. If I went out that

day it was late in the evening. I went for a short walk about 3 or 4 o'clock with my wife. I walked up Rhode Island to 24th Street and back. I saw nobody that
810 I recognized or knew. I did not come out of the house that morning at 10 o'clock, driving the Kenworthy truck. 13th and Lawrence Streets is about 10 or 12 squares from my home. I was not there that day, nor was I on Lawrence Street, nor on 13th Street that day. The truck was in the garage that afternoon. It was placed there Saturday evening between 6 and 7. The name on the side of the truck is William S. Kenworthy & Company. There is a phone number on the other side, I think. That is all. It is a Ford truck.

Thereupon **George K. Robbins** was called as a witness for the respondents, and having been previously duly sworn in this case, testified as follows:

I accompanied Ruddy on his trip to the various hotels on the morning of October 19, where he gave instructions to several operatives. It was from about 8:30 to noon. I heard him give his instructions to McMullin in the National Hotel. At no time on that trip on that morning was I out of the presence or hearing of Ruddy. I never left him for a minute. Ruddy was not at the Harrington Hotel at all that morning. We stopped at the Commodore Hotel first, and then the National Hotel. I heard him give instructions to Stewart, Howrighausen, Kirby, Klein and Long, or McMullin. O'Reilly was not on that trip. He had not arrived. He arrived late that evening. I met him at the station. After Ruddy left Wardman Park on October 23rd I stayed in the room and answered the phone and typed reports that had been given me that morning. Ruddy left the hotel around noon the 23rd to go to Philadelphia. As far as I know, he was out of town until the next morning around 7 o'clock. I called him in Philadelphia that night, the 23rd. I am positive he was in Washington the entire day of Monday, the 24th, from 5 or 7 a. m. on. I was
811 in Washington on November 2nd, before the grand jury. I was with Ruddy all day. I did not see McMullin on the 2nd. I am positive of that. McMullin testified that on the night of October 29th Ruddy, in my presence, gave him, McMullin, information to put in his report

of that date. I was away from Ruddy the entire day of October 20th, up until about one o'clock in the morning of the 21st. At no time, during the entire operation here in Washington, did I hear Ruddy suggest in any way to McMullin that he put information in his reports. I was present with Ruddy on October 29th when he directed McMullin to return to Philadelphia. I heard him give McMullin a reason for sending him back. It was excessive charges on automobile mileage. I know who brought that to Ruddy's attention. I did primarily, and Merritt verified it. Merritt collaborated with McMullin on one report. It was the report of that operation of that day which excited his suspicion.

Thereupon the witness was cross examined as follows:

(Witness was handed Government's Exhibit 125, the carbon copy of Ruddy's report of October 24.) I have seen this paper. I saw it at Wardman Park. I wrote it. During the operation I had the adjoining room to Ruddy at Wardman Park. I typed this report which says: "Washington, D. C., Monday, October 24, 1927. Continuing on the above, I was engaged from 7:30 a. m., directing operations. It was necessary to proceed to Philadelphia to proceed with other phases of the case. I discontinued at 3:30 a. m." I wrote that from the original. (Witness was handed Government's Exhibit 126.) I have seen this report. I wrote that also. It says: "Continuing on the above, I was engaged from 8 a. m. until 12 midnight directing the operation." At that time Ruddy was rooming with me at the hotel. (Witness was handed Government's Ex-
812 hibit 132). I typed the entry "Monday, the 24th—1½ days, expenses $39.51." The expenses of Ruddy for the 24th, as typed by me, read: "Hotel, $6.00; meals, $4.55; railroad fare, $12.06; taxi, $6.80; long distance phone, $2.70; local phone, $1.40.

Thereupon the witness was further examined as follows:

I made these reports from the long hand reports, the originals. I just copied them, typed them. I did not write these reports every day for Ruddy, O'Reilly or myself. These were written maybe 3 or 4 days at a time. I do not remember when I wrote those. The operatives' reports

were written every day. They had to be turned in. But these were not handled in that manner. I do not know whether they went to the client. They were not written every day. Supervision reports were written when we had the time. I distinguished between supervision reports and operatives' reports.

Thereupon **W. Sherman Burns** was called as a witness in his own behalf, and being first duly sworn testified as follows:

I am 37 years old and live at Ossining, New York. I am married, with 3 children. I am secretary and treasurer of the W. J. Burns Detective Agency. I was secretary from 1915 to 1921, and secretary and treasurer from 1921 to date. My brother, Raymond J. Burns is president of the corporation. He was treasurer from 1915 to 1921, and became president in 1921. I am the son of William J. Burns. Prior to 1921 W. J. Burns was president of the Agency, and, I think, a director. In 1921 he resigned as president and director, and severed all connections with the agency, and took the position of Director of the Bureau of Investigation of the Department of Justice. On his resigning from the Government he would advise with us. He became
813 adviser under a yearly retainer in 1925 or 1926, and that is the only connection he had. From 1921, when he resigned the position as director and president, to become Director of the Bureau of Investigation of the Department of Justice, down to his severing his connection with the Department of Justice, he had absolutely no connection with, and no participation in, the work of the Agency, advisory or otherwise. Then after he resigned his position as Director of the Bureau of Investigation of the Department of Justice he became advisor to the Agency. In that capacity he would make periodical visits to the office whenever we would request him, or whenever we desired to consult with him, and of course he had old clients who might want to consult with him from time to time; but it was a casual connection, and only when we sought his advice did he advance it. He did not come to the office of the Agency with any regularity. For example, the summer of 1927 he spent the entire time in

Florida, directing his home there in Sarasota. I do not think he got back until the latter part of August or September. From January 1, 1927 until November 1, 1927 he was not in the office in an advisory capacity or any other capacity, any substantial number of times. He might come to the office once in 2 weeks. If there was any mail directed to him there one of our secretaries would call him on the phone and tell him there was some mail, or might send it up. If a telegram came in for him, it would be opened and read to him over the telephone. That was mostly private correspondence. Raymond Burns did not have occasion to advise with W. J. Burns on the business of the Agency more that half a dozen times between January 1 and November 1 of 1927. I cannot recall any specific investigation that we had on which we sought his direct advice. We may have discussed the affairs of the
814 organization not over half a dozen times. Between 1925 and the end of 1927, W. J. Burns took part in the affairs or business or activities of the Agency only when his advice was sought. I now remember one investigation he took part in as advisor in the spring of 1927. W. J. Burns had no place, no office, no desk or any of the other appointments of an occupant of an office, in our suite at 165 Broadway at any time during 1927. When he comes to the office he goes into Raymond Burns' office, or sometimes into my office. I did not consult W. J. Burns before I accepted the employment of Mr. Day in this matter. I did not tell him that I was going to do it, or tell him afterwards that I had done it, at any time before the seizure of the records of the Agency at Wardman Park. I did not discuss this employment nor this operation with him until Tuesday, November 1, on the telephone, after the publicity of the seizure of the records. He did not have any knowledge whatever of the fact that the work was going on between October 18 and November 1. The circumstances under which the Burns Agency was employed through me are as follows: Some time during the afternoon of October 18, 1927, I returned to my office and found a slip there to call Mr. Jeffries of the Sinclair Oil Company. I call- him, and he asked me to get in touch with Mr. Day in Washington, giving me a telephone number. I called that number, but could not find Mr. Day there. It was a wrong number.

I called Jeffries back and he gave me another number, which I called and got Mr. Day. He asked me who I was and said "In connection with this matter down here"; at first I did not know what he was talking about. Then he said, "Well, this case is about to go along." Then I knew what he meant. Then he said, "These people are not locked up and I would like to have them covered. I want to see a square deal," and I think he said he would like to have 12
815 men. He did not seem inclined to discuss it freely over the telephone. I understood that. He asked me who I would have in charge, and at that time I told him I did not know who it would be. He gave me an address and made an appointment for 9 o'clock that evening for whoever I selected to meet him. He used the word "cover" which I took to be shadowing. He said he wanted a square deal. That is all the conversation I remember. I then called in our New York Manager, Mr. Scanlon, and talked over with him the selection of the personnel to be used on the matter, and told him that this was a surveillance or shadow job, that I wanted shadow men, and I told him that whatever men I would see personally I would instruct them that they were not to come in contact with any of the jurors, embarrass them in any way, and that if a juror became aware that he was being shadowed and approached any of the men, for the men to walk away and drop the juror. I told him if I did not see all the men I wanted him to give those instructions himself. I then thought over the man I would put in charge, and I selected Ruddy because I had confidence in his ability and judgment, and also because Philadelphia was near Washington. I did not select the Washington office because a week previous to that there had been a reorganization and change of management there, and some resignations and a dismissal or two. I also thought some of the men there might know some of the jurors, and I didn't know of the loyalty of all the people there. I then called Ruddy on the phone and asked him if he could go to Washington to take charge of the matter, which would probably take a couple of weeks. I told him it was in connection with the case that was going on in

Washington, and that it was a pure surveillance matter.

I asked him if he knew the case I was talking about.

816 At first he did not, and then I told him it was described in the public prints, and he then said he knew what I was talking about. I told him who he would meet giving him Day's address, and told him the appointment was for 9 o'clock. I told him he would take instructions from Day, but that after he talked to Day I want- to talk with him to be sure that I was correct in my assumption of what the work was to be and the limitations of the work, and I told him to call me on the long distance phone after his talk with Day. It was my purpose to check up what Ruddy got from Day and determine whether or not it was within the scope of what I was willing to do. I think i saw one or two of them on that day that were sent from New York. I also told Ruddy the number of men Day wanted. I told him I thought we would be able to furnish 4 or 6, and I thought we could get a couple from Baltimore, and asked him how many he could take from Philadelphia. Then I heard from Ruddy later that night or early in the morning at my home. He called me on the phone and told me that my impression of what was to be done was correct, that the jury was to be shadowed, and he said that number of men were to be used. We discussed further the question of the men. He said he could get 2 from Baltimore. I reiterated my previous instructions and told him to also instruct the men when they reported to him the limitation of this work, that it was merely a shadow job, they were not to approach the jurors, embarrass them in any way, and if any of the men violated those instructions they were to be returned to their respective offices. Ruddy said that we must report any contact with the jurors and nothing else. That was the purpose of the employment. The Agency is licensed and bonded to do business in the District of Columbia. I did not, at any other time authorize

817 Ruddy or O'Reilly or Day or anybody else to do any work or to engage in any activities for the Burns Agency or for me personally except to shadow the jury in the manner in which I have described; and for the purposes I have described. My final instructions were given to Ruddy on the occasion of his talk with me after he had seen Day.

Thereupon the following occurred:

Q. Did you mean when you sent Mr. Ruddy to Mr. Day for Day's instructions to Ruddy, did you mean by that to turn Ruddy and the Agency over to Day to do whatever Day wanted done.

The question was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I did not take any part in the activities of the Agency in connection with this case between October 18, the night of my talk with Ruddy, and October 31, the date that the records were seized. The office in New York did not receive any reports until October 31. I did not read any reports until November 2nd. I never saw the O'Reilly report on Kern or any of the other reports on Kern until I appeared before the grand jury on November 7 and was shown them by Burkinshaw. I heard McMullin testify that Ruddy directed him to insert certain false statements in several of his reports. I never authorized or countenanced anything of that sort by Ruddy or anybody else in the employ of the Agency. At no time before November 7 or 8, 1927, did I know or suspect that anyone engaged on this work had to any extent whatsoever falsified the facts in any of their reports. I never heard any of the reports challenged until Lamb and Glasscock challenged McMullin's report when they went before the grand jury on the 7th. I know of the existence of the McMullin affidavit dated November 3, 1927. I sent the report of Mc-
818 Mullin, dated October 22nd, to Washington, but I did not know that it was to be the basis of an affidavit, and I did not know any affidavit was to be drawn up, nor did I hear the affidavit was being drawn up and handed to Justice Siddons until Saturday, November 5th. I sent that report down at Ruddy's request. He said the client and the client's attorney wanted the original report. He said nothing about any affidavits. When I sent it down I had no knowledge or no suspicion that there was anything wrong about it or anythin inaccurate about it. I saw copies of both the Long affidavit and the O'Reilly affidavit in the New York office, November 5th. They were brought back by Schumacher. I do not know when he got

back, but I was confined at my home in Ossining with a cold on Friday all day. When I came down to the office Saturday, November 5th, I for the first time saw the affidavits and knew they had been made. I remember the meeting at the rooms of my father at the Woodward Hotel, New York City, on the evening of November 5th. I asked Ruddy about the affidavit there, but I didn't have any copies with me. I saw the copies and read them for the first time that morning. We meet at the Woodward Hotel to discuss this case generally. The affidavit was brought up incidentally. The subpoena for me to come to Washington before the grand jury was left in our New York office when I was home sick on Friday, and I got it Saturday morning, the 5th, when I went down to the office. I came down Sunday afternoon with W. J. Burns. I appeared and testified before the grand jury on Monday morning, the 7th, W. J. Burns testified just previous to me. Lamb and Glasscock testified on the afternoon of that day, after my father and I had testified. I met Long, or McMullin, the first time on November 8, at the station. W. J. Burns and I met Ruddy and McMullin at the station, and
819 I think Robbins was there to meet Ruddy. When they came off the train Ruddy introduced McMullin to father and me, and father asked him whether or not his report was accurate. He said, "Yes, certainly it is accurate." Father and I had heard of the substance of Lamb's and Glasscock's testimony before the grand jury the day before. Burkinshaw told us that Lamb was going to deny it. We then walked out to a taxi, and I said to Long, or McMullin, "Now, Long, are you sure of all the facts contained in your report, of there not being any question about the accuracy of your report?" I asked that question, thinking perhaps that he had the car out there but he had the wrong man, because I asked Burkinshaw in the grand jury room the day before why he had not brought that report to the attention of the grand jury.

Thereupon an objection was made to what transpired in the grand jury room, the objection was sustained and an exception duly noted; and the witness continued:

I asked Long whether he was sure of the accuracy of the facts in his report. He said, "Why, of course they

are. I wouldn't have made an affidavit. Didn't I make an affidavit?" He appeared to be very angry. Ruddy pacified him then and said, "You cannot blame Mr. Burns for asking that question." We got in the taxi and went to Lodge's office. While in the taxi Ruddy explained to Long that Lamb and Glasscock had repudiated the contents of the report. When we arrived at Lodge's office we went into Lodge's private office immediately. All of us went in there; W. J. Burns, Long, Ruddy and myself. Lodge started questioning Long about his report, and Long described the route he took going out there. He said he went over a bridge. He told how the cars were parked,
820 about the buildings, and drew a diagram. I didn't pay any attention to the diagram he drew. He mentioned the fact that he was interested in aviation. That struck me as rather peculiar, and for the first time I became suspicious of his report. Long then said, "Can I get into a jam over this matter?" And I think I spoke up, and I don't know if somebody else did. I don't know whether it was Lodge or W. J. Burns who said, "You won't get into any jam for telling the truth." Long, in his description of going over there and of what happened, said that as he was going along one of the streets he saw this car, and when he saw it he leaned down and wrote the number on an envelope that contained some D. C. license plates that he had on the floor of his car. W. J. Burns said, "Well, that is very important. Have you still got that envelope?" Long said, "No. I thought of that myself and I looked for it, and the men getting in and out of the car wore the numbers off." W. J. Burns told him to go before the grand jury and tell the truth, but not to permit Burkinshaw to bamboozle him. I did not hear W. J. Burns say to him, "Stick to your story. I will take care of you." No such thing was ever said in my presence. I said nothing of that sort to him. I have had great experience in shadowing work before this operation. A considerable volume of our work consists of shadowing all over the country.

Thereupon the following occurred:

Q. Had you shadowed jurors before?

The question was objected to, the objection sustained, and an exception duly noted and the proffer made that the witness would answer "yes" if permitted to answer.

Q. At the time that you accepted this employment, Mr. Burns, had you up to that time ever heard of the
821 legality of shadowing being in doubt or as being a violation of law? A. I never heard it questioned.

The question was objected to, the objection sustained and the answer stricken out, and an exception was duly noted.

Q. When you accepted this employment from Mr. Day, did you know of the fact that the United States Government, through its District Attorneys, had shadowed juries in criminal cases while the cases were on trial?

The question was objected to, the objection sustained and an exception duly noted.

Mr. Douglas: I offer to prove by this witness that he knew of the custom which existed and the practice that had been entered into by the United States Government through the Department of Justice and its law officers for thirty years or more of shadowing jurors in criminal cases when the case was actually on trial, and that he also knew that in many instances the jury was shadowed when they were aware of the fact that they were shadowed; that there were cases where they were shadowed and the operatives or agents were told to indicate to the jurors that they were being shadowed.

Mr. Wright: And we offer to prove further that there were other instances where the jury did not know that they were being shadowed.

Mr. Hoover: We join in the proffer on behalf of Mr. Sinclair.

Q. After this seizure of the records of the Agency at the Wardman Park, and when this matter was brought to the attention of the grand jury, I will ask you to what extent, if at all, you cooperated with Mr. Burkinshaw and
the District Attorney in bringing out all the facts
822 for the uses and purposes of the grand jury?

The question was objected to as immaterial and incompetent, the objection sustained, and an exception duly noted; and the witness continued:

Ruddy testified that Vietsch brought over to him $500 on 3 different occasions with which to meet the expenses of this operation. I instructed Vietsch to deliver those sums of money to Ruddy. I did not tell him the nature of this operation, or anything about it. He did not, under my instructions or otherwise, have anything to do with this operation. The money he brought over here was the money of the Burns Agency. He brought the money here and I sent the money there. I sent $1,500 to Baltimore to be drawn by Ruddy as he needed it to advance the expenses for the men. Vietsch's coming to Washington suited the convenience of Ruddy rather than my instructions. The reason I sent the money to Baltimore was that I knew of no way for Ruddy to get a check cashed in Washington. He had no way of getting the money unless I sent it down from New York by hand, and I did not see the necessity of doing that when we had an office at Baltimore, and I purposely did not let the Washington office know of this operation, as I have already explained. I graduated from Stanford University in California with an A.B. degree. I was in France for a year during the war. Part of the time I was in charge of the military police at Tour, then I joined the Tenth Machine Gun Battalion of the Fourth Division in the Argonne Sector, and I proceeded with the Fourth Division to the Army of Occupation in Germany, and I returned to the United States in February, 1919.

Thereupon the following occurred:

Q. Were you or not cabled for personally by General Pershing to come to France?

823 The question was objected to as immaterial and irrelevant, the objection sustained and an exception duly noted, and the proffer made that the witness would answer "yes" if permitted to answer; and the witness continued:

I was a First Lieutenant and ended up as Captain. It was some time after 2 o'clock that Mr. Jeffries telephoned

me in New York first. I communicated with Mr. Day immediately after that. I received a wrong number at first, and I think Jeffries was out when I called him back to get another number. I do not know just what time elapsed before I actually reached Day. In the conversation Day said, "Did you see what happened today?" He said that these people were permitted to go without being locked up. He did not say "the jury." I knew he meant the jury.

Thereupon the following occurred.

Q. Did he not say that "we are afraid someone will try to get to the jury"? A. I got that distinct impression.

Mr. Gordon: I object to that his impression is, and move that it go out.

The Court: Let it go out.

The witness continued:

He may have said something substantially to that effect, but I cannot say he used those words. I could not say whether he said substantially that.

Q. Do you mean you could not say whether he said substantially that or exactly that, because I am not asking you whether he said exactly that?

The question was objected to as answered, the objection sustained, and an exception duly noted, and the witness continued:

He said, "I want to see a square deal." I later brought the original reports to Washington from the Agency in New York.

824 Q. Did you turn these reports over to the Government voluntarily, to the District Attorney, after the mistrial?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would answer "Yes" if permitted to answer.

Q. You knew at the time, did you not, that you were not obliged to?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would answer "Yes" if permitted to answer.

Thereupon the witness was cross-examined as follows:

I had telephonic communications with Ruddy during the time he came to Washington and the 2nd of November. I had about four, not almost every day. I had one the early morning after the day he came. I do not recall the dates of the others. These conversations dealt with the operation in a general way, and with Agency business, too. I imagine I did not talk to Ruddy for 3 or 4 days before the mistrial. The first germ of suspicion of McMullin's reports entered my mind when he made the remark that he was interested in aviation, in Lodge's office on November 8. It was before he went to the grand jury that day. Lodge, Ruddy, W. J. Burns and I were present. That was the time he asked if he would get in a jam. On October 18 I called Mr. Day by telephone from New York at a certain number and did not get him. There was not any address. I got another number from Jeffries. I do not remember what it was. I got him at that number. I did not know the address then and I do not know it now. I sent the report of October 22nd of McMullin's down by a special messenger, Shumaker, on November 3rd. That was done at the request of Ruddy. I did not know they wanted it as
825 a basis for making an affidavit. Ruddy told me that the client's attorney wanted the original handwritten report, and that he wanted it down here right away. That is all he told me. I first learned that the affidavit had been made by McMullin on Saturday, November 5. Shumaker brought back a copy. I came down to my office in the morning and was there all day Saturday, and went to my father's apartment at the Woodward Hotel about 7 or 7:30 p. m. I went there to discuss this case, inasmuch as we were under subpoena. I think the subpoena arrived at my office the day before, Friday, when I was home sick, and I got it Saturday. I think the day before I read in the paper that I was going to be called before the grand jury. It was the 3rd or 4th. I don't recall whether or not Ruddy telephoned me that I was to appear before the grand jury. I think it was Tuesday, November 1, that I first heard from Ruddy after the seizure of the reports and papers of the Burns Agency at Wardman Park on October 31. He telephoned me and told me he had been before the grand jury. I don't know whether he told me the reports had been taken

before the grand jury, but I told him to turn over everything he had to the grand jury. I knew the reports had been seized. I presumed they were in the District Attorney's possession, or some of them. I did not take a copy of the affidavit up to my father's apartment this Saturday evening. I did not see a copy of it again until I saw it in Lodge's office on Monday, November 7. I sent the money to Ruddy through Vietsch because I knew of no way Ruddy had to cash a check in Washington. I don't think he was one of the travelling managers of the Burns Agency. He was a manager. He travelled from one office to the other during the period of reorganization. When one of our managers was operating in another district, it would
826 all depend on the circumstances of the case whether an agent from some other city would give them money to carry on the operations, or whether I would send a check direct to them. Sometimes we have men in a territory of other offices and we never let that office know they are there. I didn't feel that I couldn't trust the manager here. I felt, in view of the reorganization of this office there might be people connected with it or about to be let out, and I didn't think it advisable for them to know of the existence of this operation, or any other operation we were carrying on. That is a precaution in our business that we take. That wasn't with reference to the manager of the Washington office. If he had cashed a check in the office and it went through the office it would have become known to the personnel of the office. It was just a precautionary measure on my part.

Thereupon the witness was further examined as follows:

I think the entire $1,500 which was sent to Washington was used in paying our local operatives. I couldn't tell whether more was used without adding up the expenses on the reports, and the salaries. It was late the night of November 2nd that Ruddy asked me to send down to Washington the report of October 22nd.

Th reupon the witness was further cross-examined as follows:

In my first talk I had with Mr. Day over the telephone, we decided upon a password by which the operative that came to Mr. Day would identify himself. Inasmuch as I had not selected yet the man who was to go, so he would know who he was, we agreed that he would use the name of Jeffries, to identify himself.

Thereupon the witness was further examined as
827 follows:

That is the name of the gentleman who had originally telephoned me about the operation, and to get in touch with Mr. Day. I had not selected Ruddy. The purpose of using that name was so Mr. Day could be able to identify the man. I didn't know myself who the man was to be when I told Mr. Day he would use that name.

Thereupon the witness was examined by the Court as follows:

This name that was used was the same name as the gentleman who telephoned me originally about the matter. I think my father is about 65 or 66 years old. After he had severed his connection with the Agency and after he had also severed his connection with the Government service and returned home, he occasionally would consult or advise with some of his old clients. I can't remember any specific case during that time where he actually employed the Agency to do the work required by one of the old clients, but if an old client had requested him he would have referred him to the Agency. For some period after he left the Government service he was ill and in Europe. I can't recall any specific instances right now of his employing the Agency for an old client during that period. I had never known Mr. Day prior to the telephonic conversation I had with him that led to the employment of the Agency. Beyond this conversation, I had no communication with Day, directly or indirectly, regarding the Fall-Sinclair case. Beyond the two conversations I had with Jeffries regarding Day's phone number, I had no communication with him directly or indirectly, regarding the Fall-Sinclair case; or with anyone. I had a very brief conversation over the telephone first with Jeffries. It did not last over 5 or

10 seconds. He merely asked me to call Mr. Day in Washington and gave me a number. I knew Jeffries was
828 connected with the Sinclair Company as a result of the number given me to call back. I was to call Mr. Jeffries of the Sinclair Company. My conversation with Mr. Day with respect to the employment did not last over 2 or 3 minutes. I had no conference or communication in any form with Mr. Day after this, and I never saw Mr. Day until this proceeding started on December 5. I think 15 employees, including Ruddy and Robbins, were sent down. Mr. Day requested 12 or 14 in the telephonic communication I had with him. I told him I would want one man of experience to supervise the work. He did not dissent. I felt, in view of the limitations I put upon the employment, I wanted a man of Ruddy's character because of his judgment and discretion. I got the distinct impression that Mr. Day had a specific reason for wanting this jury held under surveillance. Now whether it was because of what he said about a fair deal, or something else, I can't remember. I think I have related in substance all that was said in this long distance telephonic communication between Mr. Day and myself respecting what Mr. Day wanted done down here. I had no later conference or conversation of any kind, or communication, with Mr. Jeffries.

Thereupon the witness was further examined as follows, and the following occurred:

Q. What was that impression you got?

The Court: No, Judge.

Mr. Gordon: I object to that.

The Court: Sustained.

Mr. Wright: Then I move there be stricken out the witness' statement that he got a distinct impression.

Mr. Gordon: It is perfectly agreeable to us.

The Court: Granted, Judge. That is all, Mr. Burns.

Mr. Douglas: That constitutes the defense, if your
829 Honor please, of the Burns defendants, and we therefore close.

Thereupon **A. Bruce Bielaski** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am practicing law in New York City, and have been since the early part of 1924. My office is at 56 Pine Street. I was employed in the Bureau of Investigation of the Department of Justice from the time of its organization, early in 1909, until sometime in February, 1919. I was Chief of the Bureau from April, 1912 until February, 1919. The Attorney General was my immediate superior while I was Chief of the Bureau. I reported to the Attorney General concerning the activities of that Department. At the time I was head of the Bureau, the headquarters was here in the Department of Justice in Washington. I had numbers of men here under me and in my office. In addition to that I had what were known as headquarters in various parts of the United States. They were located in practically all of the larger cities of the United States. At each one of those places I had in charge either an agent or a division superintendent, depending upon the particular place. Depending upon the activities of the judicial district in which my headquarters may have been located, I had various numbers of men under the men in charge.

Thereupon the following occurred:

Q. Could you tell us how many men you had in your Bureau at the time that you left there?

The question was objected to as irrelevant, the objection sustained, and an exception duly noted.

Q. During the time that you were the chief of the Bureau of Investigation of the Department of Justice, do you know as a fact that it was the custom and practice of the
830 Department, upon request being made by special agents in the field, or by the United States District Attorneys in the several districts of the United States, to assign men to shadow jurors who were sitting in cases in which the United States was prosecuting individuals or corporations for alleged crimes and offenses against the United States?

Mr. Gordon: We object, if the Court please.

Mr. Hoover: We make the offer that if the witness were permitted to answer he would testify that he did know that such a custom and practice had existed, and we offer to

prove that on the ground, first, that the usage, extending over this period of years, had ripened into a custom, and that that custom became the law, and that being so there could be no contempt of Court, under the facts in this case as related to the question of shadowing. Your Honor has already ruled on that. In addition to that, I offer it on this ground: That in a case where a man is charged with contempt of Court he has the right during the proceedings investigating the matter of contempt, to offer any evidence which may tend to purge him of the contempt, either by minimizing the character of the contempt or mitigating any punishment that might be imposed by the Court. We offer it on both grounds, may it please the Court.

The objection was sustained and an exception duly noted

Mr. Douglas: I make the same offer on behalf of Burns, and reserve an exception.

Mr. Wright: Mr. Day also makes the same offer, and notes an exception.

Q. I ask the witness this question, subject to your Honor's ruling, if it is not a fact that during the time that you were the Chief of the Bureau of Investigation of the Department of Justice, from the period of 1912 to 1919, as
831 you have testified, that reports were made by men in charge of special agents, or by special agents, of activities of these special agents in shadowing jurors who were selected and sworn in criminal cases in which the United States was prosecuting its citizens for alleged violations of the law, and that such reports were brought to the attention of the Attorney General who was in office at the time when such reports were received in the Department of Justice?

The question was objected to on the same ground, the objection sustained, and an exception duly noted by all respondents.

Q. Did or did not the several Attorneys General who were in office during the time that you were in office, in your encumbency of your office in the Bureau of Investigation in the Department of Justice, know of or approve of the custom of shadowing empaneled jurors by the United States representatives?

The question was objected to on the same ground, the objection sustained, and an exception duly noted by all the respondents and the proffer made that the witness would say they did if permitted to answer.

Thereupon **Dan E. Tatom** was called as a witness for the respondents, and being first duly sworn, testified as follows:

At present I am a travelling salesman for Union Carbide of New York. I live in Pittsburgh, Pennsylvania. I was in the Bureau of Investigation of the Department of Justice of the United States from the early part of 1918 until November, 1921. I was a Special Agent of the Bureau, located in New York and Pittsburgh.

832 Thereupon the following occurred:

Q. During the time that you were a Special Agent in the Bureau of Investigation in the Department of Justice did you actually shadow jurors who had been selected and sworn in as such in cases being tried in the Federal courts where persons or corporations were being prosecuted by the United States for alleged offenses against the United States? A. Yes, sir.

The question was objected to and a motion made to strike out the answer, the objection sustained and the motion granted, and an exception duly noted to both rulings, and the proffer made that the witness would say yes, that he had, if permitted to answer.

Mr. Morgan: We make the same proffer and we note an exception.

Q. Did you know as a fact that in Pittsburgh and New York during the time that you were employed in those places as a Special Agent, that it was the custom and practice of the Department of Justice or the United States District Attorney to have Special Agents of the Department of Justice, such as yourself, shadow jurors who were engaged in the trial of cases in which the United States was prosecuting individuals or corporations?

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Hoover: We note an exception, and make the proffer that if the witness were permitted to testify he would say that he did know of the practice, and that it was the practice to do that. And I incorporate that in the question.

Mr. Morgan: We make the same proffer, and the same exception.

833 Mr. Wright: Day joins in the exception and in the proffer.

Q. I ask you if it is not a fact that some time during the year 1918, in New York City, in the case of the United States versus Jeremiah O'Leary and others, where the defendants were charged with conspiracy, and the case being tried in the United States District Court for the Southern District of New York, that during the time that case lasted, some ten weeks, that all of the jurors in that case were being shadowed during the time that they were not in the court room by Special Agents of the Department of Justice, and that you were one of the Special Agents engaged in that particular work of shadowing that jury? That you picked them up in the morning and, to use the expression of the men engaged in the work, of Special Agents or detectives, you put them to bed at night? In other words, that you shadowed them going from their homes to the court house and after they left the court house that you shadowed them until after they had retired in their respective homes at night?

Mr. Gordon: Objected to on the same ground.

The Court: Same ruling. Sustained.

Mr. Douglas: Exception.

Mr. Hoover: We note an exception. Now we make the offer to prove that if the witness were permitted to testify he would answer that such shadowing was done by the Agents of the Department of Justice, and that he was one of the Agents engaged in that particular shadow work.

Mr. Wright: Mr. Day excepts and makes the same proffer.

Mr. Morgan: We except and make the same proffer.

Q. I will ask you if it is not a fact that in a case tried in Pittsburgh in 1919, the case which was commonly known as the Peerless Wheel case where the defendants
834 were charged with a conspiracy to violate a law or laws of the United States, namely the postal laws, that in that case while the jurors were serving as such that Agents of the Department of Justice shadowed the jurors during the time that they were not in court, the entire jury, and that you were one of the men from the Department of Justice engaged in that shadow work?

Mr. Gordon: Objected to, if the Court please, on the same ground.

The Court: Sustained.

Mr. Douglas: Exception.

Mr. Hoover: And that the character of the shadowing was as I have stated in the previous instance where they were picked up in the morning and put to bed at night. And we offer to prove that if the witness were permitted to testify that he would testify that such shadowing was done in the instance mentioned in the question, and we note an exception to the ruling of the Court.

Mr. Morgan: We join in the proffer and note an exception.

Q. Is it not a fact that in the case of United States versus Paddy Nee and others charged with conspiracy and prosecuted by the United States in Pittsburgh in 1919, that the jurors in that case were under close and intimate surveillance by Agents of the Department of Justice during the time that those jurors were sitting in the trial of that case, and that you were one of the Special Agents engaged in that work, and that the jurors were picked up in the morning and put to bed at night, as the expression is understood in your work or the work that you were then engaged in at that time?

Mr. Gordon: Objection.

835 The Court: Sustained.

Mr. Hoover: We note an exception, if your Honor please. That we offer to prove that if the witness were permitted to testify in answer to that question he would testify that the jurors were shadowed as indicated in the question.

Mr. Morgan: We join in the proffer and note an exception.

Mr. Hoover: We note an exception.

Mr. Wright: Mr. Day excepts and makes the same proffer.

Q. Mr. Tatom, is it not a fact that when a District Attorney would make request for the assignment of Agents to do shadowing work of jurors in cases on trial that they were sent in response to his request without the District Attorney giving any reasons therefor or making any showing as to the grounds for his suspicion, if he had any?

Mr. Gordon: Object to, if the Court please.

The Court: Sustained.

Mr. Douglas: I except, and offer to prove that that is the situation, by this witness, that the Department as a matter of practice and custom never made any inquiry as to the grounds for the request at all, did not inquire of the grounds on the part of the District Attorney. Exception.

Thereupon **Walter C. Foster** was called as a witness for the respondent, and being first duly sworn, testified as follows:

I am a representative of the Council of the National Association of Credit Men in Western Pennsylvania, headquarters in Pittsburgh. I live in Pittsburgh now. I was in the Bureau of Investigation of the Department of Justice from April 17, 1917, until May 6, 1926. I was stationed in the Baltimore office. I was for about 3 years at work on field assignments, fraud cases largely. I was 4½
836 years Agent in charge of the Bureau's office at Philadelphia, and for 10 months preceding my resignation Agent in charge of the Pittsburgh office.

Thereupon the following occurred:

Q. During the time that you were in the Department of Justice, and particularly during the time that you were Agent in charge in Philadelphia and in Pittsburgh, did you know as a fact that it was the practice and custom of the Department of Justice to have Agents from the

Bureau of Investigation shadow jurors in cases in which the United States was prosecuting corporations and individuals, and that shadowing was close, intimate, surveillance of the jurors during the trial.

The question was objected to, the objection sustained, and an exception duly noted.

Mr. Hoover: If permitted to testify we offer to prove by the witness that he would testify that he did know of that practice, and that that practice was indulged in during that time, and that the custom was followed.

Mr. Morgan: We make the same proffer and exception.

Mr. Wright: Day joins in the proffer.

Q. And did you know as a fact that Special Agents engaged in shadowing jurors who were sitting in cases in which the United States was prosecuting individuals and corporations, that those Special Agents would make written reports to you as the Agent in charge, making those reports daily, showing the details of the shadowing of the jurors, and that those reports when made in duplicate, one would be sent to the United States District Attorney in the District in which the case happened to be tried, and other copies of the reports would be sent to either the Attorney General in the District of Columbia or to the Chief of the Bureau of Investigation in the District of Columbia?

837 Mr. Gordon: Objection.

The Court: Sustained.

Mr. Hoover: We note an exception. And if — the question, he would testify that such reports were made and they were furnished to the United States District Attorney in the District in which the case was being tried, and a copy of the report of the shadow man sent to the office in the District of Columbia, that is, the head of the Bureau of Investigation or the Attorney General of the United States.

Mr. Morgan: We join in the proffer and note an exception.

Mr. Hoover: That that was the practice and uniform custom.

Mr. Wright: Day joins in the exception and the proffer.

Q. Now, Mr. Foster, I will ask you if it is not a fact within your knowledge that in the case of United States versus McConnell and others tried in the District Court of Pennsylvania sitting in the city of Philadelphia some time in the late winter or early spring of 1923; in which the defendants were charged with a conspiracy to violate a law of the United States, that you, as the Agent in charge of Philadelphia, assembled a force of operatives or Special Agents of the Department of Justice, and at the request and under the direction of the United States District Attorney representing the Government in that case, that the men under you shadowed those jurors who were sitting in that case during the time that they were not actually in the court room, using the term which is commonly used in that vocation, that they picked them up in the morning and put them to bed at night, and during the time that they were not in the court room that there was a close, intimate shadowing of the men, and I will ask you further if
838 it is not also the fact that the activities of your shadow men were made in the form of written reports, and that the written reports showing the details of the shadowing were sent, one copy to the United States District Attorney and a copy of the head of the Bureau of Investigation in the Department of Justice in Washington?

Mr. Gordon: Objected to.

The Court: Sustained.

Mr. Hoover: We note an exception. And we offer to prove by this witness, if permitted to testify, that he would testify that the shadowing was done in the manner incorporated in the question.

Mr. Morgan: We join in the proffer, and an exception.

Mr. Wright: An exception, and we join in the proffer.

Q. I will ask you if it is not a fact that some time during the year 1920, in the city of Seattle, State of Washington, in a case in which individuals were charged with a conspiracy to defraud the United States, the case which is commonly known as the Gray's Harbor Ship Building case, that you were there in Seattle during the time that case was on trial, and that you had under you a force of some seventeen Agents of the Department of Justice, and that after that jury was selected and sworn in that case that those Agents

of the Department of Justice acting under you engaged in a very close, intimate shadowing of the members of that jury during the time that they were not in the court room, and that you virtually and in fact did pick them up in the morning and shadowed them after they left the court house and put them into bed at night, as the expression goes? Is that not a fact?

Mr. Gordon: Objected to.

The Court: Sustained.

839 Mr. Hoover: We make the proffer, if your Honor please, that the witness, if permitted to testify, would in answer to that question testify that there was a shadowing such as is shown in that question put to the witness. And to the ruling of the Court we note an exception.

Mr. Morgan: We join in the proffer and exception.

Mr. Wright: Mr. Day joins in the proffer and exception.

Q. In these cases, Mr. Foster, about which you have been interrogated, were operatives brought from other jurisdictions to the seat of operations or where the case was being tried?

The question was objected to and the objection sustained.

Mr. Morgan: I note an exception. And I offer to prove by this witness if he were permitted to testify that he would testify that such operators were brought from other jurisdictions.

Q. Now, Mr. Foster, in the cases and in connection with the practice and the custom about which you have been interrogated, was such custom and practice limited to cases in which there was a suspicion on the part of the prosecuting attorney that some person tried to corrupt the jury?

Mr. Hoover: Do you object to that?

Mr. Gordon: Yes, I object to that.

The Court: Sustained.

Mr. Morgan: We note an exception, and we offer to prove that if he would be permitted to testify he would say that they were not limited to cases in which there was any suspicion.

Mr. Hoover: We note an exception also.

The Court: There may have been an espionage and surveillance for other purposes than those indicated in the questions hitherto put on the subject.

840 Mr. Morgan: If the Court please, that is right, this custom indulged in or practice indulged in whenever the District Attorney saw fit to do it; it did not necessarily happen in cases where there was suspicion.

The Court: Whenever the representatives of the Department of Justice thought that they would like to have the jury sworn in the case put under the surveillance of this kind, you wanted to have the opportunity to show that that was immediately authorized, or was authorized in the case?

Mr. Hoover: And was actually done.

Mr. Morgan: Yes, and was actually done.

The Court: Yes. Objection sustained.

Mr. Morgan: We note an exception.

Mr. Hoover: We note an exception also.

Thereupon **Edgar B. Speer** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am a publicity man, located at Pittsburgh. I live there. I was in the Bureau of Investigation of the Department of Justice from the Spring of 1917 until the spring of 1920. I was stationed most of the time in Pittsburgh, and part of the time in Philadelphia. During about a year of the time I was stationed in Pittsburgh I was acting Agent in charge of the Pittsburgh office.

Thereupon the following occurred:

Q. During the time that you were in the Department of Justice did you have knowledge of the fact that in cases in which the United States was prosecuting individuals and corporations, that it was the custom and practice of the United States to have the Special Agents of the Department of Justice shadow jurors who were engaged in the trial of those cases when the jurors were not in court

841 and were not locked up by order of the judge?

Mr. Gordon: Objected to, if the Court please.

The Court: Sustained.

Mr. Hoover: We note an exception. And if the witness were permitted to testify, he would say that he was familiar with the practice, and that the practice did exist and the custom did exist.

Mr. Douglas: We make the proffer and note an exception.

Mr. Wright: We note an exception and we make the proffer.

Mr. Hoover: We note an exception.

Q. Do you know as a fact that when Special Agents were employed in shadowing jurors who were not locked up while in the trial of cases, that such shadow men made written reports to the Agent in charge showing the details of the shadow work engaged in by the Agents, and that such reports, or copies of them, were furnished to the United States District Attorney in the District in which the case was being tried, and copies were sent to the head of the Bureau of Investigation in the Department of Justice here in Washington?

Mr. Gordon: Objected to on the same ground.

The Court: Sustained.

Mr. Hoover: We note an exception. And we offer to prove that if the witness were permitted to testify he would testify that such reports were made by the men engaged in shadowing jurors for the United States, and that copies of the reports of such shadow men were sent to the District Attorney and to the Bureau of Investigation in Washington. And that it was the custom and practice.

Mr. Morgan: We join in the proffer and exception.

Mr. Hoover: I understand your Honor will not
842 permit us to prove that, and we note an exception to the ruling of the Court.

Q. Do you know it to be a fact that in the case of United States versus Barrett and others, tried in the Western District of Pennsylvania in 1918 or 1919, a case lasting some ten days, that during the time that the case was on trial that the jurors selected and sworn in that case were shadowed by Special Agents of the Department of Justice, and that that shadowing began in the morning when the jurors

left their respective ho...es and continued after they left the court house following the adjournment of court, and continuing until the jurors retired at night? That that was a close, intimate shadowing to see if anybody got in contact with the jurors or approached them?

Mr. Gordon: Objected to on the same ground.

The Court: Same ruling.

Mr. Hoover: If your Honor please, we note an exception. And we offer to prove by the witness that if permitted to testify his testimony would be that there was a shadowing such as is indicated in the question.

Mr. Morgan: We join in the proffer, and exception.

Q. I will ask you furthermore if it is not a fact that while the grand jury for the Western District of Pennsylvania was considering evidence looking to the possible indictment of Barrett and others in the case to which I have already referred, that the Special Agents of the Department of Justice shadowed the members of that grand jury while they were considering the evidence relating to the alleged offense of Barrett, and shadowed in the manner that I have indicated in the previous question?

Mr. Gordon: Objected to.

The Court: Sustained.

843 Mr. Hoover: We note an exception, and we offer to prove that if the witness were permitted to testify he would testify that even the grand jury which was considering the evidence in the case was shadowed by the operatives of the Department of Justice under the circumstances indicated in the question. And we note an exception to the ruling of the Court.

Mr. Morgan: We join in the proffer and exception.

Mr. Wright: Mr. Day joins in the exception and the proffer.

Thereupon **Bernard Kahn** was called as a witness for the respondents and, being first duly sworn, testified as follows:

I am president of the Bernard Kahn Tire Company of Chicago. I live in Chicago now. I was employed by the United States Government as Special Agent in the Bureau of Investigation of the Department of Justice from March, 1917 to November, 1924.

Thereupon the following occurred:

Q. During the time that you were employed in the Bureau of Investigation in the Department of Justice did you know as a fact that it was the usage and custom of that Department to detail men to actually shadow jurors who had been selected and sworn in cases being prosecuted by the United States in which the jurors were not locked up, and that the shadowing continued during the time that the jurors were not actually in court?

Mr. Gordon: Objected to, on the ground that it is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Hoover: We offer to prove by this witness, and say if permitted to testify that he would testify that he did know that was the usage and custom. And we note an ex-

844 ception, if your Honor please.

Mr. Douglas: We note an exception, if your Honor please.

Q. During the time that you were a Special Agent did you, in 1922 or in 1923, actually shadow jurors in company with other agents of the Department of Justice in the case of United States v. Harrison which was tried at Columbus, Ohio, and that the shadowing of the jury in that case was continued by the Agents of the Department of Justice during all of the time that that case was on trial when the jury was not locked up and while the jury was away from the court house?

Mr. Gordon: Objected to for the same reason.

The Court: Sustained.

Mr. Hoover: We note an exception, and if the witness were permitted to testify he would testify that they did shadow, as stated in the question.

Mr. Douglas: We note an exception.

Q. Without making this unduly lengthy, I will ask you if, assuming what I have stated in the last preceding question, if you did not, in company with other Agents of the Department of Justice, shadow members of the jury after they had been selected and sworn and while they were not locked up, in a case being prosecuted by the United States at Minot,

North Dakota, in 1923, where the defendants on trial were charged with violating the postal laws of the United States?

Mr. Gordon: Did you give the name of the defendant?

Mr. Hoover: I haven't the name of the defendant.

Q. Do you know the name of the defendants in that case in North Dakota?

A. I can not recall it now.

Q. Do you recall such a case?

845 A. I do.

Mr. Hoover: Now I put the previous question, if your Honor please. And there is objection, I take it?

Mr. Gordon: Objected to.

Mr. Hoover: And we note exception to the ruling of the Court.

Mr. Douglas: We note an exception.

Mr. Hoover: And we offer to prove by the witness, if permitted to testify, that he would testify that they did shadow the jury in that instance.

Q. Without going into the details included in the first question regarding the Harrison case in Columbus, I will ask you if you did not, in company with other Agents of the Department of Justice, also shadow the jury in the case of United States v. Snale in which the defendants were charged with a conspiracy against the United States, and the case was tried in Chicago in 1924?

Mr. Gordon: Objected to, if the Court please, on the same grounds.

The Court: Objection sustained.

Mr. Hoover: We note an exception to the ruling of the Court as to that.

Mr. Douglas: We join in the exception.

Q. I also ask you if you, in company with other Agents of the Department of Justice, did not shadow the jury under the circumstances included in the previous questions, or under similar circumstances in the case of United States v. Hayes, which was a conspiracy to defraud the United

States, or a charge of that nature, tried in Chicago in January, 1923?

Mr. Gordon: Objected to on the same ground.
846 The Court: Sustained.
Mr. Douglas: We except.
Mr. Hoover: We note an exception also.

Q. I also ask you if you, in company with other Agents of the Department of Justice, did not shadow the jury under the circumstances included in the previous questions in a case of United States v. Gromers and Ulrich, and others, which was a conspiracy case tried in Chicago in 1923, and lasted over a period of two months?

Mr. Gordon: Objected to on the same ground.
The Court: Sustained.
Mr. Hoover: We note an exception, and state that if the proof as in other instances.
Mr. Douglas: We except.

Q. I also ask you if you, in company with other Agents of the Department of Justice, did not shadow the jury in the case of United States v. Miller, et al, in which the defendants were charged with defrauding the United States in connection with Indian lands in Oklahoma, the case being tried in Oklahoma City in February, 1923?

Mr. Gordon: Objected to, on the same ground.
The Court: Sustained.
Mr. Hoover: We make a similar offer of proof, and note an exception.
Mr. Douglas: We note an exception.

Thereupon **Albert G. Adams** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am an investigator, working for myself. I am located at 1935 Harrison Avenue, New York City, and I live in New York City. I was employed in the Bureau of Investi-
847 gation of the Department of Justice from January, 1910 to March, 1919. The first 6 years I was a Special Agent; the last 3 I was Assistant to the Division Superintendent in New York. My headquarters were New York,

but quite frequently I made trips to various parts of the country.

Thereupon the following occurred:

Q. During the time that you were engaged by the Department of Justice as an Investigator, and also as assistant chief of the division, did you know as a fact that it was the usage and custom of the United States to shadow jurors in cases being prosecuted by the United States, and that that shadowing was done by the Special Agents of the Department of Justice and the jurors shadowed during the time they were away from the court room, beginning in the morning when they left their homes, taking them to court, and after the adjournment of court continuing shadowing them until the jurors had retired to their homes in the evening?

The question was objected to on the same ground, the objection sustained, and an exception duly noted.

Mr. Hoover: We do not claim that the government shadowed the jurors in every case; but we do claim that the jurors were shadowed indiscriminately. And we offer to prove that if the witness were permitted to testify he would testify that he did know of this usage and custom, and that that was the usage and cusom of the Department at that time.

Thereupon **James W. Kemp** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am engaged in the practice of law in New York at 120 Broadway. I was in the employ of the United States Government in the Bureau of Investigation from 1914
848 until 1917 as Special Agent. I was located principally in New York. I had headquarters in Washington and in New York, and I did quite extensive travelling throughout the country on antitrust work, principally.

Thereupon the following occurred:

Q. During the time that you were in the Department as a Special Agent in the Bureau of Investigation, did you know as a fact that it was the usage and custom of the United

States in cases being prosecuted by the United States in various parts of the country that the Agents of the Bureau of Investigation would be assigned to and did shadow jurors in cases where the jurors were not locked up, and that the shadowing covered the period when the jurors were not actually serving in the court room?

Mr. Gordon: Objected to on the same ground.

The Court: Objection sustained.

Mr. Hoover: We note an exception, and state that if the witness were permitted to testify we expect to prove that there was such a custom and usage.

Thereupon **Joseph F. Kroppy** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am now engaged in the practice of law in New York City, and have been since October, 1925. I was in the Bureau of Investigation of the Department of Justice from July, 1914, until September, 1923. I was employed as Special Agent; also as Assistant Division Superintendent at New York; and as Assistant United States Attorney; and Special Assistant to the Attorney General.

Thereupon the following occurred:

Q. During the time that you were in the Department of Justice did you know as a fact that it was the usage
849 and custom of the United States in cases being prosecuted by the United States that the Agents of the Bureau of Investigation would be assigned to and did actually shadow jurors in cases where the jury was not locked up, and that the shadowing was continued during the morning until the jurors went to court and then resumed in the afternoons after the adjournment of court and continued until the jurors retired to their homes at night?

Mr Gordon: Objected to on the same ground.

The Court: Sustained.

Mr. Hoover: We note an exception, if your Honor please. We offer to prove that the witness, if permitted to testify, would testify that he did know of such usage and custom, and that that was the usage and custom. We note an exception, if your Honor please.

Thereupon the witness was cross-examined as follows:

I was not a Special Agent when I was Special Assistant to the Attorney General. My recollection is that I was appointed Special Assistant to the Attorney General in 1924, and previous to that time I had the title of a Special Assistant to the Attorney — in connection with my work as Special Agent.

Thereupon **J. Gordon Shuey** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am an investigator located in Philadelphia. I am not now in the employ of the United States Government. I was employed in the Bureau of Investigation of the Department of Justice as Special Agent, from September, 1918, until January 1, 1925.

Thereupon the following occurred:

Q. During the time that you were so employed in the Bureau of Investigation did you know as a fact that it was the usage and custom of that Bureau to assign men
850 to shadow and who actually did shadow jurors in cases in which the United States was prosecuting individuals on charges in various parts of the country, and that the shadowing continued during the time that the jurors were not locked up; that is, beginning in the morning and continuing until they went to court and continuing in the afternoon after the adjournment of court and continuing until the respective jurors retired at night?

Mr. Gordon: We object on the same ground.

The Court: Sustained.

Mr. Hoover: We note an exception and state that if the witness were permitted to testify that he would testify that he knew that that was the custom and usage, and that it did actually exist.

Mr. Douglas: We adopt the proffer, and note an exception.

Q. Did you, in company with other Agents of the Bureau of Investigation, shadow the jurors in a case tried in Philadelphia in the spring of 1924 known as the case of the

United States v. Connell, and others, and that the shadowing in that case by the Agents of the Department of Justice was close shadowing—that is, following the jurors during the time that they were not actually in court?

Mr. Gordon: Objected to.

The Court: Sustained.

Mr. Hoover: We note an exception, and make the proffer to prove that if the witness were permitted to testify he would testify that the jurors were shadowed in that case in the manner indicated in the question.

Mr. Douglas: We adopt the proffer and except also.

851 Q. I will ask you also if in company with other Agents of the Bureau of Investigation you shadowed the jurors in the case of the United States v. Guggenheim, and others, which was tried in the United States District Court for the Western District of Pennsylvania sitting in Pittsburgh, and that the shadowing was conducted in the manner indicated in the previous question?

The Court: Does the question indicate about when that occurred?

Q. Can you tell us the date of the Guggenheim case? A. No, sir; I can't tell you the date. I think it was in 1924.

Mr. Gordon: Objected to.

The Court: Sustained.

Mr. Hoover: We note an exception and make the same offer as the offer made in the previous questions.

Mr. Douglas: We join in the proffer and note an exception.

Thereupon the witness was cross-examined as follows:

I am now an investigator, for different attorneys in Philadelphia. I have not an Agency of my own. I work for myself.

Thereupon **Leo B. Abernathy** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am Vice President of the Cullen Service, Inc. Its business is commercial collections and investigations. Its office

is located at 1416 F Street. I have been connected with it for seventeen years. During that time I have had occasion to make investigations, character investigations and reports on persons who were summoned for jury service in the various courts of this District. Some time during the month of September, 1927, I was engaged by George P. Hoover to investigate persons who were selected as
852 jurors in the criminal courts of the Supreme Court of the District of Columbia beginning with the October term, 1927, which term began on October, 1927.

Thereupon the following occurred:

Q. Did you receive any instructions from George P. Hoover as to what you should do in connection with that investigation?

The question was objected to as incompetent, irrelevant and immaterial and the objection sustained.

Mr. Hoover: We note an exception. If your Honor please, if permitted to testify the witness would testify that when the witness was employed by me to do this work that he was instructed to make an investigation of those persons who were on this list of jurors in this and the other court, for the purpose of ascertaining their standing in the community; their occupations; their affiliations; the fact of whether or not they had any connections with the Government, and of whether or not other members of their families had any connection with the Government; and he was instructed not to go to the homes of any of the jurors, not to talk to any of the jurors, or any members of their families, but to make the investigations in such a manner as not to let the jurors even know that they were being investigated. Also their religions and their affiliations, and any clubs or organizations they might be members of.

The witness continued:

(Witness was handed several cards.) I recognize those cards. I typewrote them myself. After receiving instructions from George P. Hoover to make the investigation concerning these men who were drawn for jury service, I began work on October 5. I obtained the information which is

shown on these various cards which have just been exhibited to me. These cards represent the results of my
853 investigations. After I made them up I sent them to George P. Hoover's office. I sent the last ones on October 15. They were all completed by Saturday morning, the 15th.

Thereupon the following occurred:

Mr. Hoover: Now, I offer these cards in evidence, if the Court please. We will prove that the cards are the cards from which the list known as Exhibit No. 1, in this case, was made up. It is explanatory of that Exhibit No. 1, showing the origin of the information contained upon that exhibit.

Thereupon the respondents introduced in evidence the following:

RESPONDENTS' EXHIBIT No. 22.

"Charles Holt, 1104 4½ St. S. W.

Age, 63. Brick Mason.

Married and has a step son, been residing at this address past thirty five years. His step son is a painter named Jos. Spickle who also lives here. He owns realty in the N. E. section of the city but has been renting the above address all these years. He is a retired brick mason, was a member of the Union of that trade for years but retired from that sometime ago. He attends no church and has no fraternal affiliations but carries heavy life insurance. He is rated as being a man of cheerful disposition, likes to mingle with and carry on with the young folks. He bears an excellent reputation in his neighborhood and among all who know him. He is said to be square and honorable, very broadminded in his views. Source not sure but thinks has served on jury before. He is best described as an old workingman who is of a good natured disposition and holds no grudge against anybody."

RESPONDENTS' EXHIBIT No. 23.

"Norman L. Glassock, 1013 8th N. W.

Age, 47. Rec. Clerk Somerville Co.

He is married and they have two children. Been residing at this address for several years. This address is an

old frame shack, poor appearance, dirty general condition and in the downtown rooming house district. Part of the house is occupied by others. He has been employed by the Thos. Somerville Co., 312 13th N. W. Wholesale plumbers supplies, as a receiving clerk at $40 weekly and has been with the firm for 15 or 18 years. He is said to be a big, fat, lazy chap who takes the easy side of life, loves to fish, does a lot of loose talking and cursing and has no particular political or religious affiliations. He takes no
854 pride in his personal appearance. He and his whole family go down in the country every Sunday in their old car and fish. The records show an old unpaid judgment standing since July 16th, 1924, for $12 due the Wash. Business Bureau."

RESPONDENTS' EXHIBIT No. 24.

"John J. Costinett, 1422 Fairmont, N. W.
Age, 61. Merchant Tailor.

He has been married twice, first wife was Florence E. (divorced), present wife Grace L. Has a married daughter Pearl V. Merring. His real name was Costagneto and he is of Italian descent. His sisters are Mary Reami 1107 K N. E. and Kate Hurley on Geranium St. His brothers are Henry J., who is deceased, Joseph Rocco of Hyattsville, Md., a world war veteran who is receiving a pension from the government. His parents are deceased. No member of his family is in the government service. For many years he has conducted a tailor shop at 1212 N. Y. Ave. N. W. Formerly lived at 213 T St. N. W., for ten years. He was once very active in Masonic affairs when a younger man and is now said to be a life member of the Masonic order, Eastern Star and is a member of the Christian Science Church. His correct residence address is 1442 Fairmont St."

RESPONDENTS' EXHIBIT No. 25.

"Robert C. Flora, 76 T St. N. W.
Age, 38. Sales Agent Am. Ice Co.

He is married, wife is named Maud, have no children and been at this address for the past three years. Formerly #7 Second St., N. E., and 1108 7th St. N. E. Was on 2nd

St., four years and 7th st a short time. He has been employed with the American Ice Co. for the past twelve years. He has a step daughter named Eugenie who is twenty years old. He is a Mason and a communicant of the Advent Episcopal Church at 2nd and You Sts. N. W. His mother resides with them. His wife owns the residence property which was rented until they moved in three years ago. He drives a Ford coupe furnished by the employer. His wife was married twice. This is his first call for jury duty and he is known to have expressed the regret that he was not called in the court where he would have three months service instead of one. He is a man of very pronounced prejudiced views regarding religious matters and against capital. He is also a man described as 'very bullheaded.'

Over

C'C.

C.

He is a man who has proven very unsatisfactory in a credit way. Two physicians and a coal dealer were forced to use a collection agency to adjust their accounts with him. The agency reported one account not collected, another five dollars collected on $75, balance N. G., and other only partly adjusted."

855 RESPONDENTS' EXHIBIT No. 26.

"Gardner P. Grenfell, 1916 H N. W.

Age, 26. Cable Splicer.

He is unmarried, has lived here twenty six years, his father owns the property. His father is R. T. Frederick, a veterinary surgeon, and his brothers are Fred. A. Wm. M., and Carroll. All of his brothers served in the late war. William is still a patient in Mt. Alto Hospital. Brother Fred. A., is employed in a research branch of the government service, at Pearl River, N. Y. His mother is a Catholic and his father is a Protestant and he is a Catholic. His parents came here from England, he has no known politics or fraternal connections. He has been employed for twelve years by the Potomac Electric Power Company, is a cable splicer and drives a Ford roadster. He is reported as a man of good habits, character and reputation."

RESPONDENTS' EXHIBIT No. 27.

"William H. Goucher, 1408 Franklin, N. E.
Age, 39. Tire Vulcanizer.

He is married, has two sons and has been living here for the past nine years. He and his wife Mrs. Lettye F., are joint owners of the residence property. He was many years ago partner in the Chew-Goucher Tire Co. on 14th St., and the G. & W. Tire Co., wherein he was associated with W. N. Wood. There is an old judgment of record for $20 due a physician since May of 1924. He is now said to — part owner and operator of a tire vulcanizing shop on 14th St. His children attend schools, he is a Methodist and a member of the Elks. He bears a good name among those who know him and is said to be a hard working man. He is not a man of a prejudiced attitude, is said to be easily swayed in his viewpoint and this is his third call for jury service in three years. He devotes all his attention to his business and is little occupied in politics or other matters."

Thereupon **Howard E. Reed** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am an investigator employed by the Washington Railway & Electric Company. I have been there 15 years. I have been engaged in investigating work about 28 years. Sometime during the month of September, 1927, I was, in conjunction with the Cullen Agency, employed by George P. Hoover to make some character investigations of the persons who were drawn as jurors for service during the October term of the Supreme Court of the District of Columbia, beginning October 4, 1927. As a result of
856 that employment I made investigations and reports. Mr. Myers, and my son, H. E. Reed, Jr., were also employed with me. Before engaged upon this work, I received instructions from George P. Hoover as to the character of work I was to conduct.

Thereupon the following occurred:

Mr. Hoover: I make the same offer by this witness as I did with respect to the other witness, your Honor; that is to state what my instructions were.

The offer was objected to, the objection sustained, and an exception duly noted; and the witness continued:

I think I began my work on October 5th or 6th. I made investigation of the persons who were selected to serve as jurors during the October term. I completed my investigation on the Friday preceding October 17, 1927, the Monday on which the trial came up. I made reports of my investigations. (Witness was handed two cards.) I recognize these cards. I wrote them. They contain information which I obtained in the course of my investigation, pursuant to the employment I have already spoken of. After I had made these cards up, they were turned over to George P. Hoover. That was on October 14, the Friday preceding the trial.

Thereupon the respondents introduced in evidence the following:

RESPONDENTS' EXHIBIT No. 28.

"Name, Bailey, Annella L., Mrs. Color, White.
Age, 30. Address, 2700 Connecticut Ave.
Occupation, Clerk, Arthur Jordan Piano Co., G St., N. W.
Religion, Protestant. Organizations, None. Married, Yes. Children, None.

General Information.—This woman has not been living with her husband for some five or six years and no one knows where he is at the present time. From all accounts he was no good and did not support her. When he left her she went to work as a clerk at the Second National Bank for about a year and then left to take a better position with The Arthur Jordan Piano Co. One of the officials of this firm states that Mrs. Bailey is a fine, efficient

857 Bailey, Annella L. Criminal 2

(Over) Jury Record

employee and is well liked by the firm and employees. That she is a sensible woman, not of the flapper type. That she is — Christian woman but not strictly so.

No Government connections.

She was born in Washington.

HER."

RESPONDENTS' EXHIBIT No. 29.

"Name, Herzog, Conrad J. Color, White.
Age, 45. Address, 36 New York Ave.
Occupation, One of the 4 owners of the North East Motor Co. (Ford).
Religion, Lutheran. Organizations, said to be a Mason.
Married, Yes. Children, Yes, several, one boy about 18.
General Information.—Conrad Herzog, well known among Washington people as 'Connie' Herzog is the son of the late Fritz Herzog who ran a saloon in Washington for a number of years, famous in days gone by for its 'crab feasts,' Saturday nights down by the Navy Yard. He has a brother Charlie who is the well known restaurant-eur, running the place down in the Municipal Fish Market, 11th St., wharves. The juror was born in Washington, local education. He has been interested in the different forms of auto business.

Herzog, Conrad J. Criminal No. 2.

(over)

Jury Record

He has conducted the Ford Agency at 920 Bladensburg Road for about three years. Prior to that he was a salesman for the Universal Motor Co., on M St., He is of German de-cent. A hale fellow -ell met and well liked. Is easily termed a 'sporting man.'
Has been called for jury service before. Considered by corporations as a good juror.
H. E. R."

Thereupon **Harrey C. Myers** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am an investigator for the Washington Railway & Electric Company. I have been employed by them for 18 years. Sometime during the month of October, beginning about October 5, in association with Mr. Reed, who has just left the stand, and in connection with the Cullen Agency, I made character investigations of persons who were se-

lected as jurors to serve during the October term, 1927, of this Court. I actually made investigations in con-
858 nection with Mr. Reed, and as a result I compiled the information I obtained. (Witness was handed some cards.) I recognize these cards. I made them on the typewriter; actually wrote them myself. They contain the information I obtained in the course of my investigation. After I completed my investigation on October 4, I turned the cards over to Mr. Reed.

Thereupon the respondents introduced in evidence the following:

RESPONDENTS EXHIBIT No. 30.

"Name, Holmes, Bradner W. Color, w.
Age, 35. Address 203 a P. Street N. W.
Occupation, Floor Walker at Woodward and Lothrop.
Religion, Prot. Organizations Mason.
Married, Yes. Children, 1.
General Information.—We trace this juror as being in Washington for over 12 years. He came here from Vir., and worked for 12 years at Lansburg and Bro., as clerk up to floor walker. Has been with Woodward and Lothrop for about a year. His wife still works at Lansburgh and Bro. He is rated as a very fine man, quiet, conservative, and fair minded.
No Government connections. No record of prior jury service.
Bradner W. Holmes Criminal No. 2.
H C M.

Jury Record."

RESPONDENTS' EXHIBIT No. 31.

"Name, Kern, John P. Color, W.
Age, 30 years. Address, 1315 N. C. Ave. N. E.
Occupation, Salesman for Holmes Baking Co.
Religion, Prot. Organizations, None.
Married, Yes. Children, 1.
General Information.—This juror was born in Washington, a family of bread bakers and bread wagon drivers, his father was a baker (C Kerns and sons) (German de-cent).

This boy and his brother have driven bread wagons for Holmes and Sons since becoming of age.

He was educated in local schools grade but not high.

John P. Kern, Criminal No. 2.

(Over)

Jury Record

He is quite a sport. Will go to the races whenever he can. Takes a drink and takes a chance on any kind of a bet.

No government connections.

My informant states that he does not think Kerns ever served on a jury before.

HMC."

RESPONDENTS' EXHIBIT No. 32.

"Name, Kidwell, Edward J. Jr. Color, W.
859 Age, 25. Address, 1637 You Street S. E.
Occupation, Works for Knessi, Leather goods.
Religion, Prot. Organizations, None.
Married, No. Children.

General Information.—This young man is the son of Edward J. Kidwell who for 30 years has been employed (general labor) at St. Elizabeths Insane Asylum. Juror has a brother who is a barber. Since becoming of age he has worked for Knessi Bros. (trunks and leather goods 409 7th St.,) He was born in Anacostia, D. C. Education local schools. As a boy he was pretty wild,

Edward J. Kidwell, Jr., Criminal 2.

(Over)

Jury Record.

drinking and running around with rather a tough crowd. Has qui-ted down a little now but still 'a sport.'

H C M."

RESPONDENTS' EXHIBIT No. 33.

Jury Record.

"Name, Heaton, Miss Bernice K. Color, White.
Age, 30. Address, 1332 Eye Street N. W. Apt. 219.
Occupation, Chief Instructor C. & P. Telephone Co.
Religion, Prot. Organizations, None.
Married, No. Children.

General Information.—Mr. Griffin Traffic Supt., of C and P states this girl came here from Penn., about 7 years ago and applied for a position which was given her. Thinks her parents are dead. Has no relatives in Washington. That she is a very fine girl and one of the best employees they have. That she is broad minded and in his opinion would give any one a square deal.

Miss Bernice K. Heaton Crim. No.
HCN.

Thereupon the following occurred:

Mr. Hoover: Do you want me to recall Mr. Reed, Mr. Gordon?

Mr. Gordon: No, Mr. Hoover's statement that those cards were delivered to him by Mr. Reed is perfectly satisfactory to us.

Mr. Hoover: Well, that is a fact.

Thereupon the witness continued:

(Witness was handed Respondents' Exhibit No. 32, a card which has on it the name of Edward J. Kidwell, Jr.). I obtained the information which is written on that card. In getting it I called up the home of a man named Clark Teats, on U Street between 16th and 17th, S. E. I have known him for about 12 years personally. I did not
860 talk to him and obtain information from him regarding Kidwell the first time I called up, because his daughter answered the phone and she said he had gone down to church. I saw him a couple of nights after that over in Anacostia and got the information.

Thereupon **Henry Mason Day** was called as a witness in his own behalf, and being first duly sworn, testified as follows:

I was born in New York City. I entered my father's business when I was 18 years old. I was there about 7 years. Then I went in a business which I organized and originated myself, known as the Henry M. Day Companies. It was importing of foreign articles of one kind or another. At that time I was the sole owner. The character and size of that business called upon me to go abroad continually. From 1906 until August, 1927 I was in Europe on the average of twice a year in the interest of that business and my father's business. That carried me to all of Central Europe, the Near East, the Balkans, the Baltic, London a considerable time, practically every country with the exception of China and Japan. I made a large acquaintance in the business world in those countries during those years. I also made large and extensive social acquaintances in the capitals of those countries. I was the owner of between 70 and 75 per cent of my business when the war broke out. Then I severed part of my connections, with the understanding that I might go to England or France, and that such of my time as was free I could give towards the Allied cause, and that I had the privilege of resigning and going into any one of the allied armies. I left America in the latter part of November, 1914, and went to London. After being in London a few days I volunteered at India House, the General Headquarters of the English Army in London, and volunteered my services which with the time that I had free
861 at that time, were accepted. After I had accomplished what they thought was worth something, I went to France in 1915, and became associated at the Quay d'Dorsay, which was the French Headquarters, and I think was able to at least help them to some very small degree on their lines. I then returned to America and did certain business in connection with the foreign governments, and then on April 18, 1927, I volunteered to do anything which this Government might desire. Having been associated with my father in the import business, having considerable to do with the foreign interests on general foods, I was requested to go to the headquarters in New York and take over the purchases, having assigned to me some 25 or 30 lieutenants who were commissioned at that time,—I not desiring to accept a commission in that branch of the serv-

ice,—and purchased in connection with one other officer the first 35 requisitions which were sent to this country on foodstuff, prior to Mr. Hoover inaugurating his Food Bureau down here. I came to Washington and offered my services to Mr. Hoover with my cousin, Senator Thomas S. Martin of Washington, went over the entire thing with Mr. Hoover. When I was in New York in the capacity in which I have spoken, I severed my connection with my own business and devoted myself entirely to the service of the country. I was not subject to the draft. Then I went to France and reported to General Headquarters at Toul, where I did miscellaneous work. I was then assigned as Aide to General Rogers, who at that time was the General in charge of the Q. M. C. From there I was sent as Chief of Liaison to the front in various capacities. I then was returned to the United States at the request of the French Government in February, 1919, and after completing the request made of me by them through the American Army I was honorably discharged after the war was over with the rank of Major.

I received the Legion of Honor with Croix de
862 Guerre from the French Government for my services. I then turn myself again to my own affairs and became the head of a corporation and went to Constantinople. I was there on and off for three years in the administration of that corporation's business, and also lending assistance, which has been commented on, to the American Commissioner, the British High Commissioner and the French High Commissioner for their respective Governments in that country. Having acted as commissioner or advisor to the White Army, I spent a great deal of time in South Russia, where through their different ministers I was offered the concessions for the major tobacco, manganese coal, lumber, oil products, in view of their trust. Returning with these to the United States, I resigned the connections that I had at that time and became the president of the International Barnsdall Corporation, which is an oil corporation, to obtain, if possible, the concessions for the development of the Baku oil fields in Russia, along the lines of not taking over any confiscated properties, but simply acting as an agent. And this was accomplished through numerous contacts which I had, and the Interna-

tional Barnsdall Corporation proceeded to develop these as agents, and in 1923 a syndicate was formed of great magnitude, the International Barnsdall Corporation no having sufficient capital or resources to develop along the lines that were necessary. That was the first time, in 1923, that I had the pleasure of meeting Mr. Sinclair, although not being associated with him at that time, he became a stockholder of the new company which was formed to develop the Baku oil fields. In 1925 the Russian Government called upon us to take over actual possession of certain of these very lucrative territories. And Mr. Sinclair refused to do it.

Thereupon the following occurred:

863 This line of examination was objected to as incompetent and irrelevant, the objection sustained and an exception duly noted.

Mr. Wright: I am endeavoring to show how this contact with Mr. Sinclair originated and I want to introduce it for another purpose, may it please your Honor. The condition of the witness' mind at the time he employed the Burns Agency for Mr. Sinclair is in issue. It is averred on one side in the petition and is said to be otherwise in the answer. I want to and propose to prove by this incident that, as the witness has already said, the Russian Government required him to develop their concessions and in so doing to interfere with and actually to confiscate private interests, which, under the direction of Mr. Sinclair, they refused to do. That immediately their competitors in the oil business, knowing of that, made application and exerted influences, whatever they were, which resulted in the withdrawal of these concessions by the Russian Government from the interests which already possessed them, the withdrawing of them and the conferring of those concessions upon their competitors, who went ahead and did what they had refused to do, that is to *day*, in the exercise of the power conferred under the concessions despoiled private property and private interests. Now I do not care about that part of it. All I insist on is that the condition of his mind is in issue here, and no matter whether the evidence is acceptable to the Government representatives, no matter whether they like to or not, no matter whether it is hurtful or not. I ex-

pect to prove, may it please your Honor, what I have stated in the argument, and that may be regarded as my proffer, without repeating it.

Q. Proceed now, leaving out what your experience
864 was with your concessions in Russia. Were they or were they not revoked by the Russian Government?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say they were if permitted to answer.

Q. Were they, or not, immediately conferred upon your competitors?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say they were if permitted to answer; and the witness continued:

I came back to the United States and was employed as vice-president of the Sinclair Exploration Company in July, 1925. Prior to that time I had had close intimate acquaintance with Mr. Sinclair, meeting him at Directors' meetings, making a trip to Russia with him, reporting generally to the syndicate of which he was a member. I never met him at all until the middle of 1923.

Q. How long were you in Russia together, abroad together?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say four months if permitted to answer; and the witness continued:

I went to Europe continually for the Sinclair interests, Italy, France, Spain, England, all the northern countries and southern countries, on the question of concessions, foreign policy, exchanges, one thing and another. I came back to America in August, 1927. Meanwhile my friendship with Mr. Sinclair had grown. My contact with him since August 1st was to report to him fully on European conditions, on his different companies or companies in which
he was interested. I was in close, daily contact with
865 him. I opened his general mail that came in. He has a great deal more than any man could take care of, and I believe I am confidentially trusted, and I am

allowed to do it. I answer a great deal of it. His mail came in in every condition, a large part opened, unsealed before it was delivered to our offices, and it was apparent that it had been opened. I reported that fact continually to Mr. Sinclair.

Thereupon the following occurred:

Q. Were you or not followed by unidentified people that you did not know?

The question was objected to as irrelevant, the objection sustained and an exception duly noted.

Mr. Wright: And I would expect to prove, if the witness were permitted to answer——

Mr. Douglas: We join in the exception.

Mr. Hoover: We join in the exception also, if your Hoonr please.

Mr. Wright (Continuing): ——that he was continually followed on the street, up about clubs, and going to and from his home, by men whom he did not know by name or by identity, but whose physiognomy and physical identity he knew because of the fact that the same man would follow him for periods of a few days, and then another man, who had followed him before, took up the following and followed him again for a few days; and that this occurred innumerable times, and he reported it to Mr. Sinclair; that he has observed on numerous occasions continuously when he was abroad with Mr. Sinclair, Mr. Sinclair and himself were both followed continuously, in New York, in Washington and other cities, about hotels and clubs and business places, and about their homes. That is the proffer of proof that I make.

866 The Court: For the purpose of showing that the shadowing and following was a matter of considerable concern to him, I suppose?

Mr. Wright: As a matter of what, your Honor?

The Court: That that sort of shadowing, following, surveillance, if that is what it amounted to, produced a state of mind?

Mr. Wright: That is the only purpose for which I offer it. In other words, that those facts were in his mind when he employed the Burns Agency at Mr. Sinclair's direction.

The Court: And because of that you then proceed to show that that had its influence when he followed the instructions of Mr. Sinclair and employed this Agency to follow this jury?

Mr. Wright: Yes, your Honor; that he believed that some enemies of theirs, or unidentified persons whom he did not know, might undertake unlawfully to tamper with the jury and produce an unlawful and improper verdict.

The witness continued:

On October 18, 1927 I knew that W. J. Burns had been for many years the chief of the Bureau of Investigation of the Department of Justice of the United States.

Q. On that day did you know whether or not it was the custom of the United States District Attorney in the city of New York to shadow, through representatives of the Department of Justice, jurors engaged in the trial of criminal cases in the United States Courts in that city?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say he did know of it if permitted to answer.

Q. At that time was it or was it not a matter of public common knowledge in the City of New York that the
867 custom of the United States District Attorney in the trial of criminal cases in the United States Courts in the City of New York to shadow juries after they were empannelled and sworn, and during the trial?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say that it was a matter of common and general knowledge if permitted to answer; and the witness continued:

I had been in New York just prior to my coming to Washington in October.

Q. Did you or did you not know of instances in New York, through public discussion, in which jurors had been followed, jurors empanelled in the United States Courts there, by representatives of the Government and the Department of Justice, during the trial?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the wit-

ness would say he did if permitted to answer; and the witness continued:

I did not know William J. Burns or Sherman Burns or Raymond Burns personally prior to October 18th. I had not ever had any contact with either of those gentlemen, directly or indirectly, prior to that time. I came to Washington on October 10, with Mr. Sinclair. I came to look after the general business, to look after and answer numerous requests, calls of foreign diplomats and one thing and another. I expected to be called as a witness in the Fall-Sinclair trial, that is all. My main business was to look after his business while his time was taken up in Court. A number of secretaries were brought on from New York because the needs of our commercial business required it at that time. Mr. Jeffries was the personal secretary of Mr. Sinclair in the New York Office, 45 Nassau Street. He was
868 in charge of that office during the absence of Mr. Sinclair and myself and the others who were here with us. The first conversation that Mr. Sinclair and I ever had upon the subject of shadowing the jury was about 3 p. m. on October 18. It was after the jury had been sworn and had gone on their business for the rest of the day. I was not in Court that day. The conversation was after Mr. Sinclair had come back from Court. The subject had not been touched on before between us. I had not ever thought of it before. We were at the Mayflower Hotel in Suite 1031, and Mr. Sinclair stated that he was terribly disappointed that the jury had not been locked up, and that he was very much exercised, that some of his enemies, competitors, and those who had written us so many malicious letters might in some way try to influence this jury, and stated he wanted me to tell one of the secretaries to call up Jeffries in New York and ask him to have one of the Burnses communicate with me at a place which would be convenient for me, and that he wanted from 12 to 14 operatives, with a lieutenant and a captain, sent to Washington to cover those who were sworn as jurors in this case. He said they were to cover these jurors, not to approach them, not to speak to them, not to in any way come in contact with them. They were simply to observe and report any suspicious acts which in their opinion might be done by

the respective jurors, or those coming in contact with them, and to report also, if it was feasible, the people who did come in contact with them in a way which the operatives could do without arousing any suspicion. That is the substance of the instructions. I told one of the secretaries to call Jeffries, in line with Mr. Sinclair's instructions to me, and to tell one of the Burnses to call me on the telephone. I gave him the number North 51, which is at 2118 Leroy Place. I do not recall the identity of the secretary whom I directed to call Jeffries. Subsequently someone
869 called me who said he was Mr. Burns. He did not say which Mr. Burns it was. I substance I said to him, "You know the case which is now about to commence — Washington, and I would like you to send to Washington 10 or 12 of the most responsible men you have, with a lieutenant and a captain in charge, as I want to see, if it is humanly possible, that Mr. Sinclair in this case receives a square deal." I may have said that the jury had been let go without being locked up. It was very natural for me to say that, as I was disappointed and surprised that they were not. I think I stated to him that I wanted the jury shadowed, but under no circumstances were they to come in contact with the men, and in other words repeated the conversation or instructions which Mr. Sinclair had given me. At that time I knew that W. J. Burns had been, the chief of the Bureau of Investigation of the Department of Justice of the United States.

Thereupon the following occurred:

Q. Did you then have in mind the experience that you had in Russia with your competitors?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say that he did if permitted to answer; and the witness continued:

I then had in mind the fact that Mr. Sinclair's mail had been continually opened.

Q. I forgot to ask you whether or not his mail contained threatening and vindictive letters?

The question was objected to as not the best evidence, the objection sustained, and an exception duly noted, and the proffer made that the witness would say it did if permitted to answer, and the witness continued:

His mail contained such letters especially during the last two weeks prior to the opening of the trial. There
870 were dozens of letters, from anybody, from every source, begging and demanding money. Such mail came daily since we came to Washington, and before we came. In answer to my request, Mr. Burns stated that he would send one of his representatives to me at 9 or 10 that night. A place of meeting was arranged. I said I wanted to be very sure the man came from him, because I had been asked so many questions by miscellaneous people, that I wanted no questions, and suggested to Mr. Burns that his representative would say to me that he came from Mr. Jeffries or say he was Mr. Jeffries, or some contact of that kind, so I would know he was the man. Ruddy called on me that night. He opened the conversation by saying I am from Jeffries," or something of that sort, and then produced his own card, showing he was manager of the Philadelphia office of the Burns Agency. It had his name on it. (Witness was handed a card.) It was a card such as this. It read, "R. J. Burns, President, W. S. Burns, Secretary Treasurer. The William J. Burns International Detective Agency, Incorporated, Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Dallas, Denver, Detroit, Houston, Kansas City, Los Angeles, Memphis, Miami, Minneapolis, New Orleans, New York, Asheville, Oklahoma City, Paris, Philadelphia, Pittsburgh, Portland, Salt Lake City, San Antonio, San Francisco, Seattle, Spokane, St. Louis, Washington. Telephone, Bell—Rittenhouse 1154 5. Keystone—Race 1259. Charles G. Ruddy, Manager, 432 Widener Building, Philadelphia, Pa." I told Ruddy that the jury in the Sinclair-Fall case had not been locked up or kept together, and I wanted from 12 to 14 men to keep these jurors under surveillance to see who they came in contact with, to see if there was anything suspicious, that they were not to talk to them, they were not to interfere,

they were not in any way to embarrass them. I repeated the instructions which had been given to me relative
871 to this, and I wanted daily reports of these operatives, through Ruddy to me, as to just what took place. I asked him if he had these men with him. He said no, that there would be 7 or 8 at the Union Station the following morning. I asked him where he generally stayed, and he said he would go to Wardman Park. I said, "The minute that you get your affairs in shape you will report to me." I think the conversation ended there. Some of it took place in 2118 LeRoy Place and some of it took place walking down the street. I handed him Government's Exhibit 1, the list of jurors. I got it from Mr. Sinclair at the Mayflower on the afternoon of October 18, at the same time I was instructed to employ the Burns Agency. He told me it was a list of jurors that had been sworn, the details of which had been compiled by Mr. Hoover. I simply told Ruddy what it was. As I remember I saw Ruddy the following day at Wardman Park and he told me he had assigned 7 or 8 men to certain jurors on the list I had given him; that he anticipated that he would have the number which I had spoken of by the following day; that it was very difficult to get, on such short notice, men of the highest calibre which was demanded by me, but that he hoped there would be sufficient here the following day. I think I saw him the next day. He then told me 4 or 5 had arrived and had been assigned. I remember commenting on the fact that the number of men that I had asked for had not arrived. I cannot fix definite dates. On the afternoon of the 19th, or possibly the morning of the 20th, I asked Ruddy, "Where are the reports of those who had presumably been assigned the morning of the 19th?" I told him we had to have those promptly because of the tactics — were used by Mr. Sinclair's enemies and his competitors that I had seen used time and time again, the horse would be out of
872 the stable by the time we knew that such a thing had happened, Ruddy quite frankly said that a thing of this kind could not be organized overnight, but that he was doing the best he could. I did not have any further conversation with Ruddy before I began to receive the reports. I began to receive them on the 20th. I never received nor

saw a single one of the original reports. I saw what I now know to be the edited reports. I never received any of them from anyone else other than Ruddy. I did not know, nor did I ever know, any one of the operatives. I never saw one of them to be able to identify him as such until in this court room here. I never talked with any one of them before this trial began; nor did I know Ruddy or who he was before the night he came to 2118. I had had no communication with him, except as I have shown, indirectly, through Jeffries and Burns, nor with any other detective, in my life. I never saw O'Reilly, to be able to identify him. I received some of the reports in Ruddy's room at Wardman Park. There were other men there. I knew who Robbins was. Ruddy told me. I never took the trouble to try to fix the identity of the other men. I saw O'Reilly there. I first knew him as O'Reilly when he was pointed out to me when I was attending the grand jury in November. I never talked with him in Ruddy's room. Sometimes Ruddy and I looked the reports over together. I asked him if anything had come up particularly. I submitted only certain of the reports to Mr. Sinclair. I showed him the one that was uppermost, in my mind, which was the Glasscock report. I showed him 4 or 5 every day, as I remember it, where the subject had been lost for one reason or another through traffic. I made it a point to show him those edited reports wherein the subjects had been lost. I called his attention to the items of expense that were reported in
873 those reports. I remember showing him the Kern reports and the Kidwell reports particularly, and the Heaton reports and the Holmes reports. Mr. Sinclair and I discussed them. He was exceedingly exercised over the Glasscock report, and over the fact that so many subjects were lost in traffic. I remember he said, "It is not feasible to keep constant and close surveillance of these jurors." As the reports began to accumulate, he instructed me to dismiss the entire operative force that we had here. I think that was the afternoon of Sunday, the 23rd. He said it was not feasible to keep the jurors under shadow due to the fact that they apparently were being lost in traffic; that expenses were running terrifically high; that he did not see how he could stop the opportunity of those who had stabbed him in the back in every other thing from getting to these

men without his knowing it; and therefore he wanted the entire crowd dismissed. I told him I thought that was a mistake. I gave him the reason that we had before us one very glaring instance of a report of a man going to an isolated spot with one of the jurors; that we had not fully run that to the ground. From my standpoint, Kern and Kidwell were not depicted in Government's Exhibit 1 as exactly the most model subjects. This showed that Kern was a driver of a bread wagon and the reports showed that he was driving around in Hudson limousines or Hudson coaches and Essex coaches; he seemed to be a man who had considerable money for what I would ordinarily imagine that a driver of a bread wagon would be making. Then compared with the outline of the rest of these gentlemen who were on the jury, I am quite frank to admit I wanted to know more about Kidwell. The reports showed that Kidwell always was with 3 men. He left the court house
with 3 men, or he joined 3 men, or there were 3 men
874 waiting for him. Mr. Sinclair stated that he thought
my suspicions might be well grounded; that the details as to Glasscock should be followed up; that we should find out just with whom he did go to the isolated spot, that was reported as suspicious; that it might be a good idea to find out if Kidwell and Kern were really substantial citizens. He told me to keep 2 or 3 men and let the rest go. I got in communication with Ruddy on that subject either late Sunday afternoon or Monday morning. I told him to let all the operatives go immediately, and simply keep 2 or 3 men to work on the Glasscock episode and to continue on Kidwell and Kern. I just gave general instructions. I did not at that time, or at any other time, have in mind or contemplate the making of any contact with any juror, or to approach any juror directly or indirectly, or to affect any juror one way or another, or to accomplish a mistrial, or to accomplish any kind of influence over any juror; not under any conditions; I did not know anything about O'Reilly's visit to Kidwell's residence. I did not in any way suggest it. I did not know that he was going there, before he went. I first know he had been there when Major Gordon read in Court the original of the so-called edited report, which was given to me, relative to his investigation of Kidwell, the barber. I said something to Ruddy about

getting a designation on Kidwell's brother, the Barber. I said, that according to the list of jurors, which is Government Exhibit 1, it stated that Kidwell had a brother, a barber. I wanted to know if he was employed as a barber in any of the prominent Washington Barber shops because of the experience that I have had in going into barber shops, barbers are probably the greatest talkers in the world about their business and other peoples' business. I wanted to know if this man was employed in any of those
875 shops where he might be promiscuously talking about this trial or in any was expressing anybody's ideas about the trial, with the clients that might come in. I was not at Wardman Park on the afternoon of October 24. I arrived there after dinner, sometime between 8 and 11 p. m., and went to Ruddy's room. I saw a man standing by the bureau, and Ruddy and he were in conversation. I heard some of it; practically none of it. I heard this man, whom I afterwards found to be O'Reilly, and whom I did not know and was not introduced to at that time, say it was a disreputable barber shop, up on a hill in a disreputable hotel. I did not talk with O'Reilly at all myself. I had nothing whatsoever to do with the selection of the hotels where these operatives stopped while they were in Washington. I did have something to do with finally getting the few that were left to stay at Wardman Park. I told Ruddy that in view of the enormous expense, which to me was a great deal, I thought that the force of the few remaining operatives that he had should be consolidated into what was then 2 bedrooms with 4 beds, in trying to conserve the money of Mr. Sinclair. Juror Flora was discussed by Ruddy and me. After a few days I did not see any reports on him, and I asked Ruddy why this was, and he told me it was because he had not enough men here to do the work I had outlined and requested him to do, but that they were trying to obtain another man. I do not remember ever receiving an edited report, or any other kind of a report, on Juror Flora. I think I saw Ruddy about once a day while I was in Washington. I had had no previous experience in the employment of detectives, or in the reading of their reports. I conferred with Mr. Sinclair on this subject of

operatives every now and then. He was busy from the minute he got to the hotel until 1 or 2 o'clock in the
876 morning every day, with endless affairs. I conversed with Ruddy specifically about Juror Kern and about the investigation of him. I do not remember the date, but I remember saying to Ruddy that this man did not live up at all with the report he had handed me, Exhibit 1, and I wanted to know something about him. I think Ruddy said, "Why don't you get a credit slip out on him." I said, "What do you mean by that?" He said, "Well, as to his standing, as to his substantiality; whether he owns his home, whether he owes money every place, or just what." I said, "Well, that is a good idea. Do you do that investigating?" He said they did. I said, "Where do you start?" And he said, "I generally start to look up a man's home, whether he owns it, whether it has an encumbrance on it." I said, "Well, suppose you do that." I came in contact with Britton Browne at 2118 Leroy Place, shortly after that talk with Ruddy. I asked him how to look up a mortgage to find out about a man's encumbrance. He said, "We do that every day. That is normal in the real estate business. We have definite, specific people to do that. And if you would like to avail yourself of the services of these people there, naturally you can do so." I saw Mr. Browne at his office. I told him I had come in to see him but didn't find him. I therefore applied to a man who was there relative to a mortgage, or if there was a mortgage on a certain piece of property. He asked me who it was, and I said I thought it was Mr. Dove. He asked me if Dove gave me the information. I said no, but that he said that he would through his regular channels obtain this information for me. Mr. Browne asked in the office if they had obtained certain information which I wanted. They stated that they had handed me a slip of paper saying that there was a mortgage of some $4,000 or $5,000 on a certain
877 piece of property, and that the mortgage was in the name of Kern and somebody else. Mr. Brown said, "Who has this mortgage?" I said I didn't know. He said I must find out. He then referred to somebody to find out who held the mortgage and how much it was. The information came back and he told me that the mortgage

was owned or held by a Building Loan Company, that it had been reduced and was being reduced by the payment of $40 a month. I said to him, "I am very suspicious of somebody, one of our competitors, or one of our enemies, or somebody paying this off. And I would like to be advised if anybody did pay it off." I think Mr. Browne asked me why Sinclair did not have some gasoline stations in Washington. I said that everything humanly possible had been done and was being done in the oil business to keep people out. I think I told Mr. Browne that Kern was one of the jurors in this case, and that that was why I wanted this information. From my standpoint I did everything openly and above-board. I first addressed a clerk I had never seen before in my life. At the time the edited reports of the operatives were received by me, and at no time afterwards up to the date of the mistrial did I have any suspicion or belief that any of them contained false statements. I had nothing to do with the preparation of the O'Reilly or McMullin affidavits. I took no part in that. I first secured counsel in this matter after I had come down here on a subpœna to appear before the grand jury. I appeared before the grand jury and had told them that I didn't know what my rights were in the matter, and they gave me the opportunity of consulting counsel. That was after the mistrial. I did not, in this investigation of Kern, nor at any time before that investigation, nor at any other time have in mind any purpose or thought of directly or indirectly making contact with Juror Kern. Absolutely not. Under no circumstances. I did not under any
878 circumstances, at the time of the employment of the Burns Agency, or prior thereto, or afterwards, have any thought or purpose by that employment, or in any other way, to make contact with any member of the jury, or of endeavoring to accomplish a mistrial, or in any other way influencing the outcome of the trial. I first consulted counsel on the night of November 1. I consulted Judge Daniel Thew Wright. He then inquired of and received from me information as to McMullin's reports on Glasscock and O'Reilly's report on Lamb. I know about the employment of a camera by one of these agents. After giving considerable thought to the report and having been

told that the license number of the car was H. R. Lamb's, Special Attorney General, I advised Ruddy that in my opinion there should be under no circumstances any question; that this thing was of such paramount importance that I wanted him to instruct one of the operatives to buy a camera; I wanted two men to work together, and to not deviate in any way from the original instructions given him that if these two men were seen together again that they should take a picture of them. I was absolutely not authorized or directed by Mr. Sinclair to employ the Burns Agency for any other purpose than those which I have related that is to say, shadowing of a jury without any kind of contact. I do not know anything about the Teapot Dome affair other than what I have read; I never showed any of these edited reports to Donald Woodward, nor discussed any of these reports with him. I did not meet or have any further talk over the telephone, or otherwise, with Sherman Burns after that first talk on the night of October 18. I never at any time had any contact by phone or personally, or any communication with W. J. Burns about this matter. I never saw Vietsch until I saw him in this
879 court room, nor did I ever speak to him prior to that date.

Thereupon the witness was cross-examined as follows:

I learned who Lamb was when his automobile number had been looked up. It was reported to me that the car bearing that number belonged to H. R. Lamb, who was a Special Agent of the Department of Justice. I do not remember the exact time that I first talked to Ruddy about the Glasscock report of October 22. It was probably given me on the 24th. I directed the shadowing of Kern's brother. The reason for that was on account of what had been shown me of Kern in Exhibit No. 1, that his brother was a baker and I could not appreciate how a driver of a bread wagon could drive around first in one automobile and then another and never walk. I was not told whose automobiles they were that he was riding in. I tried to find out. I directed that the camera be purchased some time after it had been definitely ascertained that the license of the car was the property of H. R. Lamb. I do not think it was before that. I saw Ruddy at different places, at 2118

Leroy place, at Wardman Park Hotel, once at the Willard Hotel when I was there at lunch. I never saw him at the Mayflower Hotel.

Thereupon the witness was examined by the Court as follows:

I arrived in Washington on October 10 with Mr. Sinclair. A number of employees also came. They did not come down in connection with the Sinclair-Fall case, but because we had a number of business deals which were pending at that time. Mr. Sinclair came with respect to the case. I came primarily to attend to business matters. I first became suspicious with respect to the jury perhaps being approached by someone due to the manner of conduct of so many people even on the first day that I arrived at
880 the Mayflower. In consequence of some of the reports I became strongly suspicious. These suspicions became very firmly fixed in my mind after the reports that showed that Glasscock had been to the Post Office and to the flying field. It was in consequence of that that I gave such instructions as I did. It was approximately October 26th that I began to make my own inquiries as to the encumbrance on Kern's property. That was due to the reports that I had received on Kern up to the 25th, and due to my having met [illegible] the Mayflower Hotel a certain individual that I had always been very suspicious of. On the 25th or 26th I definitely made up my mind that it was important to ascertain what the character and extent, if any, of the encumbrance on Kern's property was. Mr. Sinclair broached to me the question of shadowing this jury on the afternoon of the day when the jury had been empanelled to try the case. I most decidedly shared in his views and reasons for doing this. I do not know whether or not he had been advised by counsel to do this. My recollection is that I mentioned that two people were in Washington; I had seen them on the street. Mr. Sinclair was dumbfounded. There was no one there when he told me to employ the Burns Agency. Mr. Sinclair was very much disappointed because the jury was not locked up. He also evinced great anxiety. I did not report to him daily, because so many of the reports did not contain anything other than "lost in

traffic" or that the juror had returned normally to his business, and then to his home and retired. Mr. Sinclair made inquiry from time to time about the course of the surveillance. I consulted with him in regard to the reports that I thought were of concern. I think I consulted with him about the inquiries which I directed to be made about the barber Kidwell. I could not say whether
881 it was before or after I had given the directions.

I did not report to or consult with Mr. Sinclair with respect to the directions which I gave and my own steps which I took to ascertain the encumbrance on Kern's property. I did not see him. I left Washington after I made that inquiry to attend my mother's 75th anniversary. I think the trial was over when I took it up with him. I never received O'Reilly's report, which was read in Court relative to that morning. I considered the matter closed when it was a Building and Loan Association, and I was to be notified by Mr. Hagner or Mr. Browne if anybody tried to pay it off. Hagner had not given any instructions, but I had said that I would like to know if it was paid off by anybody. I was suspicious that somebody would. I did not give definite instructions to Hagner & Company to watch the records to see whether or not the mortgage was paid off, but I would certainly have gone back there later on to find out if anybody did. I did not go back because a mistrial was caused, and I had left Washington. I did not anticipate that Hagner & Company would keep me informed as to that. It was around October 25th or 26th that I ascertained that an assistant Attorney General was supposed to have been coming in contact with this jury. I certainly believed *it*. If I knew that he had I would have reported that to the Court regardless of anybody. I hoped that the contact would come again. I had instructed that a camera be bought and a picture taken of it. I only had the automobile license number corresponding with the car said to belong to H. R. Lamb. If I personally had seen Mr. Lamb and had known him and had seen him in the presence of Glasscock, I would have been down here in 5 minutes to inform the Court, and furthermore, if I had actual proof of it I should have done
882 it immediately. I never had the concrete proof in my hands that contact had been established between an Assistant Attorney General and a juror. I wanted a

picture taken to have absolute unquestionable proof. On the 25th or 26th information came to me that the owner of the car was an Assistant Attorney General; knowing Mr. Lamb as I did, there was a question in my mind that he had come in contact with this juror. I know where Mr. Lamb came from, why he came to Washington, who proposed him for the clubs, because I happen to belong to some of the clubs, and I was dumbfounded, I admit it, that it happened to be Mr. Lamb. But it was my duty to follow and try and catch somebody at this game. I instructed that the camera be bought. It was never used. I did not have what would have been convincing proof that this contact had been established, if a picture could have been taken of Lamb and the juror in contact. I was dumbfounded, but not convinced. At that moment and at that point there was very great danger to my friend and associate, Mr. Sinclair. If I had had that concrete information, if I had known that to be a fact, I would have brought it to your Honor's attention within 5 minutes.

Thereupon the witness was further examined as follows:

Independent of what I believed about Mr. Lamb, I did not feel that I had enough evidence to identify him as the man who was at the flying field to justify me in making the accusations to the Court. I did not feel at that time that I had evidence to identify him as the man who had been at the flying field, other than the ownership of the automobile. After I first read Exhibit 1, when it was given me on the 18th by Mr. Sinclair, I was immediately struck by the description and qualities of two of the panel as they appeared in that exhibit. It perturbed and disturbed my mind from that moment on. I spoke about an inci-
883 dent in the Mayflower Hotel when I saw a certain man. That incident actuated me to make the Kern investigation.

Thereupon the following occurred:

Q. Will you relate that incident?

The question was objected to, the objection sustained, and an exception duly noted.

Q. Was that or not one of the incidents which prompted you to make the Kern investigation?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would say that it was if permitted to answer.

Q. What was that incident?

The question was objected to as not being proper redirect, the objection sustained, and an exception duly noted, and the proffer made that if the witness were permitted to answer, he would testify that this was a man who had been in the employ and was in the employ of certain of their competitors, and who, to the mind of the witness, was known, in the parlance of the street, as one who did the dirty work for them.

Thereupon the witness was further cross-examined as follows:

I know of H. R. Lamb. I first knew of him in New York City. He did not belong to a club with me in New York City. He belongs to a club in Washington that I belong to. I knew him as a friend of Bill Donovan, the Assistant Attorney General. I have known of H. R. Lamb like I have known of Major Gordon, and any prominent man. I could not say how long I have known of him.

884 Thereupon **Donald Woodward**, a witness heretofore sworn on behalf of the United States, was recalled on behalf of the respondents and testified as follows:

I am president of Woodward & Lothrop, and actively at the head of its management. I know Mr. Mason Day and have known him intimately for 15 or 20 years. I know his reputation in Washington for honesty, integrity and as a law-abiding citizen. It is good, absolutely, unquestionable.

Thereupon the following occurred:

Q. Have you ever heard a man say a word against him?

The question was objected to, the objection sustained, and an exception duly noted, and the proffer made that the witness would state he never heard a man say a word, if permitted to answer.

Thereupon **Harry Wardman** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am president of the Wardman interests in Washington. I have business interests abroad, in London, but not elsewhere on the continent of Europe. I have a hotel in London. I know Henry Mason Day. I have known him 6 years, both abroad and in this country. I know other people who know him in Paris. I know other people who know him in London. I know his general reputation in Washington for honesty, integrity, and as a law-abiding citizen. It is good. I know his reputation in Paris for honesty, integrity and a law-abiding man. It is good. I have been with him abroad in London and on the Continent. I have been with him on a ship in crossing the ocean.

Thereupon **W. W. Chiswell** was called as a witness for the respondents, and being first duly sworn, testified as follows:

885 I have lived in Washington about 30 years. I am President of the Peoples Life Insurance Company, and have been such about 20 years. I am active in the management of its affairs. I know Henry Mason Day. I have known him for several years. I know his general reputation in Washington for honesty, integrity, and as a law-abiding man. It is good.

Thereupon **George N. Ray** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am an architect in Washington and have been such for 15 years. I know Henry Mason Day. I have known him about 4 or 5 years. I know his general reputation in Washington for honesty, integrity, and as a law-abiding man. It is good.

Thereupon **A. Britton Browne** was called as a witness for the respondents, and having been heretofore duly sworn in this cause, testified as follows:

I am connected with Randall Hagner & Company. I have been in business in Washington about 25 years. I am a

son of Aldus B. Browne. I know Henry Mason Day. I have known him 5 or 6 years. I know his general reputation in Washington for honesty, integrity and as a law-abiding man. It is good.

In the conversation I had with Mr. Day in my office after he had been given certain information about the Kern mortgage, he told me why he wanted the information about Kern. He told me that there seemed to be a great deal of interest on the part of politicians and others, and it was up to them to watch every move, to see that nothing was tampered with, or anybody paid anything. He told me Mr. Kern was a juror in the Sinclair-Fall trial.

Thereupon the evidence for Mr. Day was closed.

886 Thereupon **N. D. Parham** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am employed by the Sinclair Consolidated Oil Corporation, at 1317 F Street. I have been so employed for 7 years. During the week beginning October 10, 1927, I did some typewriting work for Mr. Sinclair and the other gentlemen connected with the Sinclair case, in the Mayflower Hotel (Witness was handed Respondent's Exhibits 22 to 33). I made 4 or 5 lists from cards similar to these cards. The cards were handed to me by G. T. Stanford, who is also connected with the Sinclair Consolidated Oil Corporation. The lists I made up were the venire of Criminal Court No. 1 and Criminal Court No. 2, that is the jurors, 26 in number, for each Court, drawn for the October Term, 1927. (Witness was handed Government's Exhibit 1.) I made that list, actually did the typewriting of it on the afternoon or evening of the day the jury was drawn, October 18. I did it after the Court adjourned. I made it up from the lists I had made on the 14th or 15th, that is, from the typewritten copies or cards.

Thereupon the witness was cross-examined as follows:

These lists that I made on the 14th or 15th included 52 names and descriptions, 26 in No. 1 and 26 in No. 2. On the 18th, after Court adjourned I made up Government's Exhibit 1, of the jurors that had been drawn. Mr. Stan-

ford or Mr. Sinclair told me that that was the jury that was drawn, and they wanted a list of the jury. I don't remember the actual time. I cannot recall whether Mr. Stanford and Mr. Sinclair were together. One of the two told me. It was in Mr. Sinclair's apartment at the Mayflower. Mr. Stanford is general counsel for the Sinclair Consolidated Corporation.

Thereupon the witness was further examined as follows:

887 I said I made up this list showing the jurors who had been drawn. I mean the jurors who had been sworn to try the case.

Thereupon the witness was further cross-examined as follows:

I did not learn the time of day that the jury was sworn. I do not know when they were sworn. I was not there. I was at the hotel. I took the information that I put into Government's Exhibit No. 1 from the lists I had made previously. I do not recall whether I gave that list when I had completed it to Mr. Stanford or Mr. Sinclair, but to one or the other of them. They were not together at the time, so far as I can remember. Mr. Stanford had charge of the list.

Thereupon **George P. Hoover** was called as a witness for the respondents, and being first duly sworn, testified as follows:

I am a lawyer. I have been in the active practice of law in Washington for more than 25 years. I was one of the active counsel for Mr. Sinclair in the recent trial of United States v. Sinclair and Fall. I took part in empanelling the jury in Court. G. T. Stanford is general counsel for the Sinclair Consolidated Oil Corporation. His office is located at 45 Nassau Street, New York. He was not able to be here now. I do not know anything about Government's Exhibit No. 1. I did not communicate with Mr. Stanford on the subject. I employed Mr. Abernathy of the Cullen Service and Mr. Reed of the Washington Railway & Electric Company to make a character investigation of the men who were drawn for service as jurors in Criminal Court

No. 1 and in Criminal Court No. 2 for the October Term, beginning October 4, 1927. I had done that in many cases before, in fact ever since I have been engaged in the practice of law here in the District of Columbia, in cases of importance, and where the clients could afford the expense of having that done. I knew it was the practice of
888 lawyers generally to do it, during all the time that I had been engaged in the practice here. They reported to me, by means of cards. (The cards were handed to the witness.) Those are the very cards, that is these are the cards on the twelve jurors who were selected and sworn to try the case of United States v. Sinclair and Fall. They furnished cards for each of the 26 venire-men for each of the two criminal courts. These cards were furnished to me by Mr. Abernathy and Mr. Reed. They began to give me the cards sometime during the early part of the week beginning October 10th, their work beginning on October 5. When the jury was completed in the two courts, I received the last of the cards either on Thursday, October 13th or Friday, October 14th. I am not exactly sure as to that. They furnished me only one card for each juror. Their were no duplicates. Counsel for Mr. Fall desired a copy of the list of jurors, and the reports made by these investigators. We were then engaged in preparation for the trial of the case, which was set for October 17th. My stenographers were very busily engaged on other matters and did not have time to make copies of these cards. Mr. Stanford, Mr. G. T. Stanford, came into my office, Friday—he was in there nearly every day, but on this particular matter, when in the office, he asked for a copy of this list, or a copy of the reports. I told him that I had none. I told him that my stenographers were very busy and did not have time to make them. He said that if I would give them to him he would have copies made by some one of their typewriters that they had at the Mayflower Hotel, and I gave them to Mr. Stanford, and he had them, I think, a day; he got them on Friday and brought them back on Saturday. I received a copy of the typewritten list that was made up from these cards. I gave him all the cards, the 52 cards.
They were subsequently returned to me by Mr. Stan-
889 ford, either on the 14th or 15th of October.

Thereupon the Respondent Sinclair rested.

Thereupon the Government rested.

Thereupon the motion to strike from the record all of the original reports of the Burns Agency was renewed by each respondent, the motion overruled and an exception noted by all the respondents.

Thereupon a motion was made by each respondent to strike out Government's Exhibit 170, the O'Reilly report for October 28 dealing with the *the* Kern investigation, on the ground it never came to the attention of Mr. Day, the motion was overruled and an exception duly noted by all of the respondents.

Thereupon the motions to strike from the record the testimony of Mrs. Bailey in regard to the conversation she is said to have had with Juror Kidwell when he returned to the court house, in which Kidwell is said to have stated that he came into the anteroom of the court house to keep out of trouble; and the testimony of Miss Heaton to the same effect; and anything that Kidwell may have said on that occasion were renewed by each respondent on the grounds already stated, and in addition to that on the whole evidence now in, and the motions were overruled, and exceptions duly noted by all of the respondents.

Thereupon the motion to strike from the record the testimony of Miss Heaton to the effect that she was present during the trial in the conference room of the jurors, when the subject of being watched or shadowed or followed was mentioned or discussed was renewed by each respondent, the motion was overruled and an exception duly noted by all of the respondents.

Thereupon the motions to strike from the record the testimony of the witnesses McMullin and Burr, as previously innumerated, were renewed by each respondent on
890 the grounds already stated and on the additional grounds of the testimony of the respondents respecting the duties of Ruddy and the testimony of Ruddy himself regarding the matter of the alleged false reports and statements of McMullin, the motions weer overruled and exceptions duly noted by all of the respondents.

Thereupon the respondents Sinclair and Day severally moved the Court to discharge the rule and dismiss the petition, which motions the Court overruled and to which rulings the respondents Sinclair and Day severally excepted.

Thereupon the motion to discharge the rule as to Charles L. Vietsch was granted.

Thereupon a motion was made to discharge the rule and dismiss the petition with respect to the Respondent William J. Burns on the ground that there was not one scintilla of evidence introduced in the case that in any way connected William J. Burns, directly or indirectly, with or showed that he had knowledge of, the employment of the Burns Agency for the purpose of shadowing the jury, or with the actual surveillance itself, or with any act that might be construed as, or constituting a contempt of court, and the disposition of the motion postponed until the case fully argued and finally submitted.

Thereupon after argument of counsel, the Court found and ruled as follows:

Decision of the Court.

The Court: I have endeavored to follow the evidence in this case with the greatest care. I do not pretend, nor can any other person engaged in this case pretend, to keep in their memory every scrap of the evidence that has taken so many weeks now to submit. I think, however, I have it sufficiently in mind not to require any briefs on the evidence, memorandums such as have been rather urged upon me that I should receive and consider. Day by day I have listened to the evidence. I have read it, and it would be rather an affectation on my part if I had not, now that the arguments have been concluded and the case submitted, realized the effect of the evidence on the important questions that are presented by the pleadings in this case.

891 I have scrutinized and examined the evidence as it came to me in its reported form from day to day. I will not say that I have ready every line of the stenographic report, because I have not, but I have, I am sure,

got very definitely in mind all the vital important features of the evidence.

I am not all disposed, because the matter now has been very thoroughly presented in the most forceful way, to go over again what I undertook to say when the original motion to discharge the rule and to dismiss this petition was presented. Very thorough arguments were then made. Some of the ground then covered has been again presented, and it has been, I think, reinforced with further expressions and considerations that have suggested themselves, or contentions, or convictions, or call them what you please, that have been made and which counsel believe firmly to be sound.

Well, opinions and views of men vary very much. Strangely enough, despite the excellent and forceful and lawyer-like arguments that I have listened to, and listened to with profit, have not changed my view or my views as to the character of this espionage. I have no desire to enlarge *of* magnify what I then said.

We have again, of course, a court called upon to determine whether existing principles of law are applicable to a given case and the evidence which is brought out; then either the law applies to them, or it does not. I will say this much, however, and I do so because of some of the phases of the discussion that were presetned to me today and yesterday; That the respondents here take the position that shadowing a jury, shadowing such as they admit in this case, is a legal right, harmless in its character, but

892 if I have understood some of the contentions made here today aright, this right to so shadow, harmless as it is, changes its character of the fact of the surveillance shall be disclosed to those who are the subjects of it; not by contact, necessarily, but if their consciousness should be penetrated by the knowledge that such a legal right was being exercised, a harmless one at that, at once takes on a different character by the mere fact that it penetrates, in a given case, penetrates the consciousness of those who are subject to the surveillance. I find it quite impossible, applying logic and legal reasoning, to discover why an act alleged to be a harmless one provided it is not discovered, if it is discovered it becomes harmful.

No judge who remembers his oath of office; no judge who knows something of the institutions of our country and its government, its branches of government; no judge, remembering those things proceeds to the hearings in a contempt proceeding with any desire to extend the power of the court to penalize in a particular case for contempt of court; no judge who knows something of the history of what we call in the law contempt of court, no judge who, knowing that history, but knows that there have been times when some judges have used the power in their hands, no judge familiar with that history but knows that there are limitations upon the power of the court.

The petition in this case—and I am not going to rehearse its allegations; it is familiar to everyone concerned in this case—it charges a criminal contempt on the part of the respondents named in that petition. It charges the purposes for which it is alleged in the petition the contempt of court was committed, for what purposes it was committed.

There is a difference, of course, between Section 268 of the judicial code, a marked difference, and Section
893 135 of the criminal code. It is perfectly clear that as to the latter the Congress was declaring what conduct would constitute a criminal offense, and provided for its penalty. Section 268 is quite different; different in its language, of course, and in its purpose and intent. It has been said that that section, by force of authority, with the power that that language of the statute vested in the court already existed before the passage of the statute. (Reading:)

"The said courts shall have power to impose and administer the necessary oaths and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority; Provided, That such power to punish contempts shall not be construed to extend to any cases except the misbehaviour of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehaviour of any of the officers of said courts in their official transactions, or the disobedience of or resistance of any such officer, or of any party, juror, or witness in their presence," and so forth.

The Supreme Court has had occasion to say more than once that when the Congress ordained and set up the courts of the country, they became at once possessed of the necessary power to penalize for contempt of court whenever it can be seen that the act or conduct under investigation tends or does or is an obstruction of the administration of justice.

And it has been said—it has been frequently said here by counsel for the respondents—Judge Wright said it, I think, very forcibly today that once this power departed courts might almost as well close their doors. It
894 has been urged with very great force and earnestness and conviction, I have no doubt, on the part of counsel urging it, that *of* declare that the right claimed by the respondents in this case to carry on such a surveillance as they said, for instance, they did,—to say that that is a contempt of court is an attempt on the part of the court to engage in judicial legislation. I do not think so. Nor do I agree at all with the criticisms of counsel for the Government in the matter of reasoning about this thing. This matter is unsound. And, indeed, I have rather got the impression from some statements made by one or two of the counsel for respondents in the arguments that this right claimed by them logically—and when I say logically I mean in accordance with the legal reasoning as well as the logic of logicians—that the right claimed by them has practically no limits at all and that it may include the court, the judge presiding in the court, or the judges; or, if it can be done in the trial courts, it can be done with respect to the appellate courts of the country. No court would be free from the exercise of this claimed right of surveillance.

But, after all, dealing only with the trial court here, a court of the United States, a court of original and general jurisdiction possessing all of the powers and authority exercised by the Federal District Courts of the country, possessing a great deal more in the way of jurisdiction, for this is a court of original and exclusive jurisdiction; it is not a court of limited jurisdiction. Its jurisdiction does not have to affirmatively appear on the pleadings when the judicial function is invoked in the institution of a suit.

There is presumption in favor of its jurisdiction. And that jurisdiction gives power, of necessity. There is,
895 of course, a difference between jurisdiction and judicial power. Undoubtedly there can be nothing in the jurisdiction of a court, unless with that jurisdiction comes power to deal with those subjects that are confided to its jurisdiction.

When Congress, in the exercise of its Constitutional power and authority to establish courts, marks the jurisdiction of such courts as it sets up, it may mark as well by limitations and exceptions the extent of the judicial power that may be exercised by the courts upon which jurisdiction, either limited or unlimited in character may be conferred.

And so I say again, as I said before, the claimed right here is, first, that it is a right; a right that may not be interfered with in its exercise. What is the right that is claimed? I am speaking now of the claim that respondents make in this case. It is a claim that they may establish such a surveillance of the jury, judge, prosecuting officer, witnesses. It is charged that all of that was done in this case. If it could be done, if the right exists, as claimed there, saying nothing about this right as some of the arguments in support of it allege, just so long as you conceal what you are doing, it is a right; but once it is disclosed and penetrates the consciousness of those subject to it in some magical way, it becomes at once harmful. I am unable to follow a contention of that character. I can only see in the assertion and in the exercise of a right such as this one that makes almost inevitably and in and of itself when exercised an obstruction to the administration of justice. And I am unable to escape from that conviction, and I, too, have meditated and reflected upon it as I am sure from the earnestness of counsel for respondents that they too have meditated and reflected upon it.

Is it a moral thing to do? Of course, courts of
896 justice are not established to enforce morality. We all know that. Morality, speaking in the broader signification of the word, is left to the consciences of men to determine whether they shall observe the accepted principles of morality, or otherwise. When we come to apply

the thought of moral quality to the administration of justice in our courts—that what is claimed as a right lacks a moral sanction—while, of course, that is not determinative as a legal proposition as to whether it is right, surely an act that is not moral, or lacks a moral quality, when the act comes into play with respect to the administration of justice its lack of moral quality, if it does lack it, is at least worthy of consideration. I can only see in the right claimed and to the extent as claimed and exercised in this case an obstruction of justice, and I am not able to follow the contention made here that before you can judicially denounce it as offending against the law, that the obstruction of justice must have been accomplished.

What is the duty of courts in the matter of protecting their jurisdiction, safeguarding the great questions of life and liberty and property that are brought before the court for determination? Surely, surely, it is an imperative duty of the judges of those courts to denounce and penalize those acts which in given instances accomplish an obstruction of justice and in others threaten it. We have, of course, authority, but no case has been found like this.

I am not going to say anything further about the matter, excepting, because of some allusion I think made by the District Attorney in the course of his concluding argument on a phase of it, and I think possible he had in mind the offers to receive in evidence testimony to the effect
897 that this sort of surveillance had been carried on for a great many years under the sanction and at the direction of district attorneys and of the Department of Justice itself. That evidence was excluded. It is enough to say in passing that we do not have that evidence before us. We do not have, therefore, to consider it. It is enough to say that there have been cases of a surveillance maintained over a jury with the knowledge and consent of the court in which the jury is sitting. But that was far from saying that it was such a surveillance as constitutes an obstruction to justice or threatening or which tends to threaten the administration of justice in that case. The court knows of it and gives its approval, not that it is a claimed right to do the thing, but because good reasons have been assigned in a given case to make it so. And if

it be true that at the behest of district attorneys in some part of the country and for a whim or caprice, if you please, without reason of any sort, they conclude that they will ask the Department of Justice to furnish them a sufficient number of Federal Agents to put a jury or court under surveillance, if I am right in my view of the law, all the evidence in the world of that kind would not make it right.

I say evidence of that sort is not in the case and passes out. It does not pass out; it never was in, but I pass by any further reference to it.

I am not going to go over the evidence in this case as to the motive and purpose and the influence of this Act. I am quite aware that testimony has been put on here on behalf of the respondents which, by itself, tended to show that there was no sinister purpose, no improper motive. I have listened with the greatest care to the contentions made with respect to that matter by both sides here, and I will
898 say no more than this about it: That it has a most sinister aspect. The reference is here; the evidence is here. I think there is little left to be done but to announce my conclusion.

But before I do that there is a matter that I have wished to dispose of, and that is with respect to the charges of coercion and intimidation of the witness Kidwell, that very suddenly and at the conclusion of a trial day were made in open court. The charge has been made of the present and continuous coercion of Kidwell with respect to his testimony in the case, and he was on the stand and his testimony was not over it was not completed. If the testimony was the result of intimidation and coercion, what probative value or force could be given to it? The charge of intimidation and coercion was directed against a particular member of the District Attorney's staff, Mr. O'Leary. Now, what have we in the way of facts which shed light upon such a charge as that at the time it was made.

Among the affidavits that were submitted to the Court, there are two, of Akers and King, with regard, as those affidavits stated, to what Kidwell was doing and saying while a member of this jury. He testified here that he did not know what an affidavit was. Well, let us assume that up to the time when these affidavits affecting the case were

filed in this Court, that he did not know what an affidavit was. There cannot be the slightest doubt that from the moment of the mistrial, if he had had the most ordinary intelligence, he had every opportunity to learn, and, I have no doubt, did learn then and there, it seems, immediately what an affidavit was. The Court called his attention, in declaring a mistrial, to the filing of these two affidavits affecting him. What did he do? He did the wise thing.

899 Either on the 3rd or the 4th day, I believe it was, he employed competent counsel to protect him, and, so far as the evidence is concerned which was brought out on this charge of coercion and intimidation, Kidwell was under the protection of counsel and under the advice of a member of the bar from that time on. There is no evidence, no testimony that there was withheld from that counsel, by the District Attorney's office, or any member of it, anything that might affect Kidwell as a witness; and, within a few days of Kidwell's employment of counsel, he filed his petition seeking to be admitted as a party to this contempt proceeding.

As I remember the testimony, up to the very moment of Kidwell's being called to the stand, he was still under the protective care of his counsel. There is evidence tending to show that when Mr. Easby-Smith, in company with counsel, went out to Kidwell's home, counsel, Kidwell's counsel was there. It cannot be for a moment supposed that if Kidwell's counsel thought that Kidwell was being subjected to intimidation and coercion, in an effort to compel him to testify to that which he himself did not believe and did not think was true, that his counsel would have hesitated for a moment in appealing to the Court to protect his client from anything of the kind.

The affidavits that he made, the affidavit that he made, after all is said and done, with regard to the identify of one or more of these agents, was of very weak probat-ve value. He did say he was not sure. But taking all of the evidence that was developed in the case, and it would make of Kidwell's testimony, as to whether he identified one or more of these agents, as not of very great probative value

at all. I am very sure; indeed I am confident that if there had been any such intimidation and coercion as that charged the Court would have been promptly informed of it, if by no one else, by Kidwell's attorney; and then,
900 two days after the charges in the Akers and King affidavit had been filed in this Court he, as I have said, very prudently retained a competent member of this bar to protect him, and he did. There is every evidence that he did, every evidence that throughout, and up to the time tha- Kidwell took the stand, that that member of the bar, his counsel, was there watchful of his interests, doing all that he honestly could do in the enforcement of his client's rights, whatever they were, and presenting at least two applications to this Court in his behalf.

I do not think there was any intimidation or coercion of Kidwell. I have no doubt that he was pressed on the question—pressed I mean by the District Attorney's office, by Mr. O'Leary, if you please—as to whether he could identify any one of these agents. It is perfectly obvious, from the standpoint of the District Attorney, the prosecution in this case, that the identification by any juror in this case of any one of these agents, while engaged in the matter of this espionage and surveillance, was an important thing to bring out, if it could be brought out, and established by evidence, if it could be, in support of the allegations of this petition. I say that in the Court's opinion there was no intimidation or coercion of Kidwell by the District Attorney's office or any member of it, any member of his staff.

And now we come to the question of whether or not, under all of this evidence, the respondents who are still here answering this charge, have been guilty of contempt of Court.

Thereupon the following occurred:

Mr. Hoover: I might suggest to your Honor, before you come to that question that you have before you the motion which we made to discharge the rule and dismiss the petition, which has not yet been disposed of by your
901 Honor. It properly should be disposed of by your Honor before your Honor reaches your final conclusion as a Judge of the law and facts. I want to ask your

Honor that that motion be disposed of so that we can make the record clear on that.

The Court: You mean the last motion that Mr. Littleton presented?

Mr. Littleton: Yes, your Honor.

The Court: Well, that motion is overruled.

Mr. Hoover: Your Honor, we note an exception on behalf of Mr. Sinclair and Mr. Day, and I take it, Mr. Douglas, will note an exception on behalf of the Messrs. Burns?

Mr. Douglas: I desire to note an exception on behalf of the Burns respondent. Now I ask if your Honor will dispose of the motion as to William J. Burns before you dispose of the case as a whole.

The Court: Yes, Mr. Douglas, I am going to dispose of it all.

Mr. Hoover: I call your Honor's attention to the fact that you have not disposed of the motion made at the outset of this case, to dismiss the petition on the ground that the petition did not set up a case which would entitle the Court to hold any of the respondents guilty of contempt.

The Court: I had supposed that every motion, save that last one, had been presented and disposed of.

Mr. Hoover: That has not been disposed of, your Honor.

The Court: Very well, then. It is now disposed of. It is overruled.

Mr. Hoover: We desire to note an exception to the ruling of the Court.

902 Mr. Douglas: We desire to note an exception.

Mr. Wright: On behalf of Mr. Day we note an exception.

Thereupon the Court continued:

The Court: Now, on the question of the share taken by Mr. William J. Burns in this matter, it is one that has given me a great deal of—or, rather, I have given a great deal of consideration to it. I was very much inclined at first to the view that the evidence here would not justify holding Mr. William J. Burns in contempt of Court. I have followed very closely, or at least I have tried to do so, the very powerful argument made in his behalf by his counsel, Mr. Douglas, and also the argument of the prose-

cutors here on the subject. What we have really with regard to the evidence in this case is certain facts concerning Mr. W. J. Burns and the explanation of those facts by him, and such other evidence in his behalf as has been submitted here. It is that evidence, together with facts about which there is not any dispute in his behalf, and I will do no more than just briefly touch upon that evidence. I am not going to go over ground that has been traveled more than once by counsel on both sides here as to Mr. William J. Burns' connection with this Agency. As Mr. Douglas has very forcibly said, from the point of view of the contention he was making, of course Mr. William J. Burns was concerned about this matter. He was concerned about the Agency. As said by Mr. Douglas "It was his child." He was concerned about the matter because his sons or at least one of them was involved in this charge.

It is in evidence that he had for a very considerable time known the respondent Sinclair, that he had advised with him, and if I remember the testimony correctly,
903 he had advised with him about matters coming within the purview of the Agency work at any rate, within a comparatively recent time. It is in evidence here that Mr. Sinclair was an old client of Mr. W. J. Burns. It is in evidence that, despite his restricted connection with the Agency, after he had retired finally from public office, that he did advise with his old clients.

I am asked, in his behalf, to hold, to believe, that he knew absolutely nothing about the employment of this Agency in this surveillance until after the mistrial was declared. Here was his old client, an old client of his facing a criminal indictment against himself and another, in a case which had attracted countrywide attention. Here the respondent, Sinclair, comes to town in preparation, at least in part, for the trial which was to take place a week later, after his arrival. Here we have the employment by this Agency of 15 or 16 agents for the purpose of establishing this surveillance in that case after the jury is empaneled. Mr. William J. Burns, it is said, knows nothing whatsoever about it. Here he was in Washington, before the trial of the case commences, some twenty-four or thirty-six hours, but he knows nothing about the case and nothing about

the surveillance and nothing about the matter of a surveillance that, in a week, less than a week from the time of Mr. Sinclair's arrival in town, was to commence. I will not go over again the facts which have been discussed pro and con. It is perfectly true that Mr. Burns had denied that he was here. It is impossible for the Court to think that he was in entire ignorance of this matter. It taxes his credulity to do it.

Mr. Burns' reputation has been testified to by those of high standing, by citizens of high standing, who had known him for periods ranging from 30 years, 25 years, 20 years to a shorter time. They all united in saying that
904 his reputation, as they knew it, was that of a man of integrity and a good citizen. There is no evidence before the Court to the contrary, and, after all, I suppose it to be true that in a case like this there is a presumption of a person being a good citizen, even if he is charged with a criminal offense of some kind. Sometimes evidence of that character raises a doubt of the guilt of the person charged with a crinimal offense. Taking the evidence in a case, and then taking reputation evidence, that reputation evidence has been known, in given cases, even to raise a reasonable doubt where none existed with reference to the other testimony against the defendant in the case. That Mr. William J. Burns should do what he could for the sake of his son, for the sake of the Agency that he had founded—certainly that ought not to be held against him. The question is whether or not he took such a part in this matter, in the presentation of this affidavit to the Court, as subjects him to condemnation for his share in it. No answer has been given, no effective answer, it seems to me as to why that affidavit was delivered to the Court. There must have been some motive, some purpose about it. It was not a futile, a useless act. I learn from the argument, or I am told in the argument of counsel in his behalf that he did not know anything about its delivery. Well, there is testimony to the effect that he stated very publicly to the newspaper men, gathered in this very building, that he filed such an affidavit. It has been stated, of course, that he did not know its falsity, that it was false, that clearly he did not know it was false. It is insisted by the Government that,

under the circumstances and evidence in this case, that he did know it was false, knew it was false when it was placed in the hands of this Court. That is a charge of the most serious character, that this man who had enjoyed, ap-
905 parently up to this time, a reputation for good citizenship, of being a man of integrity, that he should knowingly cause to be submitted to this Court that affidavit, seems almost past belief. That he knew of this surveillance, under the testimony in this case, I cannot doubt. After all, the question maybe is whether or not mere knowledge of the surveillance by the agency is enough to require his being adjudged in contempt. There is no evidence that I recall, up to the time of the mistrial, that otherwise connects W. J. Burns with this matter. Of course I do not lose sight of the evidence that he is the founder of the Agency and has been the leading force in it until, he said, and others say in his behalf, that he drifted out of it when he entered the employment of the Government, and never resumed it except in a qualified capacity, but he did, in a qualified capacity enter its service as an advisor. I am told that he never volunteered advice, that he only gave advice when it was solicited by his sons or by the Agency. I am not able to go that far, under this testimony, but I think the evidence shows—and it is not an unnatural situation; it is a most natural situation—the evidence points to Mr. W. J. Burns' interest in this Agency, whether it is the kind of legal interest we speak of—it was an interest, a vital interest, an interest which would more likely be a strong interest than one that has for its basis some ownership of shares of stock. That he knew of this surveillance I cannot doubt, and that he knew it from the time it began. It is conceivable, I say again, from the time he knew, must have known, that when his client, the respondent Sinclair, was coming up for trial in this Court under a criminal indictment charging him, with another, with a very serious offense, that Mr. W. J. Burns knew about it. So while it cannot be said that his part in it is to the extent of his son Sherman Burns' part in it, much less that of the
906 respondent Day or of the respondent Sinclair, I am obliged to find from this evidence that he was a party to that surveillance. I cannot escape the conviction, there-

fore, that respondent Sinclair, respondent Day, respondent Sherman Burns and respondent W. J. Burns, have been, perhaps in different degrees, all involved, more or less directly involved, in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this Court. If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publication of the affidavit regarding it, but at least in part, necessitated a mistrial.

Now, what should be the proper penalty?

Thereupon the following occurred:

Mr. Hoover: May it please your Honor, before your Honor takes up that matter, in order to have this record straight, I want to note an exception to what might be termed the finding of facts which your Honor has found——

The Court (Interposing): To what?

Mr. Hoover: The finding of fact that your Honor has made during the course of your opinion, as you have announced it.

The Court: Mr. Hoover, I did not catch that.

Mr. Hoover: I say I desire to note an exception to the finding of facts that you have made and the conclusions of law you have reached in connection with the opinion which your Honor has delivered this afternoon. I want to note an exception to each and all of them. I do not think it is necessary for me to point them out specifically.

The Court: No.

907 Mr. Wright: May it please your Honor, before there is consideration of the question of penalty, I am referring to what your Honor has already said in your opinion this afternoon as to the evidence that was offered as to the custom of the Department of Justice, I want now to reoffer that evidence on the question of mitigation, as it was offered during the main case, and I make the tender now again so that it may not be thought that I have overlooked it.

Mr. Hoover: We offered in both branches, at the time it was offered in the main case, but in order to be on the safe side I again make the offer in conformity with what Judge Wright has just said to your Honor, and that offer I make on behalf of the respondent Sinclair.

The Court: I overrule the offer.

Mr. Hoover: We note an exception.

Mr. Wright: We note an exception.

Mr. Douglas: I would like to note an exception on behalf of the defendant William J. Burns, particularly on the motion to dismiss as to him, and I note also an exception on behalf of Mr. William J. Burns and Mr. Sherman Burns with reference to your Honor's decision and statement of the facts.

The Court: I was going to say, before the imposition of sentence, that if counsel desire to say anything on the subject of sentences, I shall be very glad to hear it, very briefly.

Thereupon Mr. Gordon spoke as follows:

Mr. Gordon: If your Honor please, I cannot agree with counsel representing respondents that what they did, and all they did they thought they had a right to do. I think the evidence shows here that the respondents brought these men here to do the thing they are charged in the petition with doing, and that they, or some of them, thought
1928 that they were doing what they had the right to do because they think that anything they do is right. And with respect to Mr. Sherman Burns, I feel that when he was summoned before the grand jury that he did bring the papers and records that were called for. I feel differently towards him for that reason than towards any of the others. And in the presentation of that matter before the grand jury he cooperated very extensively with the District Attorney.

But with respect to the rest of them, I think they should have a jail sentence and the greatest sentence that the Court feels that it could award under the law.

Thereupon the Court continued:

The Court: I do not want there to be any misapprehension at all about the Court's conclusions as they have already been announced. Dealing with all the evidence in this case, I did deal with all the evidence in the case in reaching these conclusions. Some plea has been made here this afternoon on behalf of these respondents; pleas that might be made at any time with respect to anyone who commits a criminal offense in the honest belief that he is doing something within his legal rights. We can not proceed to administer the law upon the theory that one did not know it was against the law. They may believe that it was not against the law. They may believe that it was a perfectly legal act, but if it be an act against the law their belief about the matter, or their ignorance of the law does not save them from the consequences of their act. I have said enough about the disastrous thing that has happened here in the breakdown of this criminal trial, a breakdown that from the evidence in this case is clearly attributable to the acts of these respondents. Clearly so. If they had not established the surveillance for aught that appears
909 in this case, there would have been no breakdown of that criminal case, a case involving, no doubt, a great deal of money in its presentation; a great deal of money on both sides; the expenditure of a great deal of money on both sides. It broke down, and it broke down because of the surveillance of this jury. If it had not been, for aught that appears in this case, for the surveillance, there would not have been the incident regarding the juror Kidwell. He was not made a party respondent in this case. But there was the surveillance, and I do not care to go back over the record, but it is here in the record in connection with the views expressed here about the surveillance. Talk about an admonition because a man believed he was doing that which he thought he had a right to do! It is no answer to it at all.

I was very glad to hear what the District Attorney had to say in calling attention to the fact with regard to Mr. Sherman Burns. I am glad to know at any rate that when it was discovered that this thing was going on and had been going

on, that Mr. Sherman Burns did not interpose any obstacles to the investigation of the case. And that I understand, Sir, is what you wish to convey to the Court, Mr. District Attorney, with regard to him?

Mr. Gordon: Yes, your Honor.

The Court: He is entitled to consideration in the matter of a penalty for that reason, a consideration as to the character and extent of the penalty, for that reason.

Mr. Sherman Burns, do you wish to say anything in addition to what has been said on your behalf?

Mr. W. Sherman Burns: If it please the Court, if there
— any courtesy meted out here, I wish it would be
910 meted out to my father. With all due respect to the Court, and I know the Court has given all his decisions the greatest consideration, I think a great injustice has been done my father. But I, personally, am in a position to know. That is all, your Honor.

The Court: The sentence and judgment of the Court is, Mr. Sherman Burns, that you pay a fine of One Thousand Dollars.

Mr. W. J. Burns, do you wish to say anything further?

Mr. William J. Burns: Nothing, except to say, your Honor, that before my God I am as innocent as a child unborn. I never knew a thing in the world about this matter until after it was all over, and just as I testified to.

The Court: Mr. Burns, I do think that there are circumstances adduced by the evidence that in your case requires the imposition of a less penalty than, but for those circumstances, would be imposed upon you at this time. I give a very full consideration to the testimony that is uncontradicted here that up to the time of your connection with this case you had been an honorable citizen of the United States and a man of integrity, against whose character as an honorable, honest man, no word had ever been spoken. But over and over again as you I am sure know, Mr. Burns, that men and women of the highest character make their mistakes sometimes. I have found under the evidence in this case that you did have a share in this matter. But I think that in your case the penalty to be imposed, because of the extent and character of that share, should be, as I have said, much lighter than it might otherwise have been.

The sentence of the law is that you be imprisoned in the Washington Asylum and Jail for a period of fifteen days.

Mr. Day, have you anything you wish to say, sir?

Mr. Henry Mason Day: No, sir, I have not, sir. I
911 simply did what I would do if I was associated with a man to try to protect his interest. When I was given an opportunity on the stand I tried to clarify the situation and state the reasons why it was done, and every word, as I have read it from the testimony in the record, is the truth.

The Court: I will say to you, Mr. Day, that under the evidence in this case that you showed a loyalty to a friend and associate greater than your loyalty to the law of the land, and loyalty in friendship, I think, is a splendid virtue. But there is a higher loyalty than that. It is the loyalty that a man owes to the institutions of his country; a loyalty to its laws. You have violated those laws. You took an active part in this matter from the very beginning. It was under your instructions and your directions that this disastrous thing took place. For that you must suffer the penalty. And in imposing it, again I say that I think you showed a loyalty to your friend and business associate that I think constitutes more or less of a virtue in a man's character and makes the stern and unpleasant duty that is mine today a little harder to perform. The sentence of the law is that you be imprisoned in the Washington Asylum and Jail for the period of four months.

Mr. Sinclair, is there anything you wish to say?

Mr. Sinclair: No, your Honor. I think that I have nothing to add to what has been said in my behalf.

The Court: You have had loyal friends, Mr. Sinclair, and one of them has just listened to the sentence of the Court imposed upon him for what he did, as he tells us, for you and for your cause in which he believed. I do not doubt his belief as he has expressed it here, to protect you, his friend, and his associate. Under the evidence in this
912 case you set this surveillance afoot, you authorized it, you directed it, and presumably—I say presumably; but there has been no attempt on the part of your counsel or any one in this case to say that it was not your means that enabled you to authorize this thing to be done

in a case against you and another which was on trial, a case in which it was very difficult to see how one conscious of the facts could do aught than to contribute to the full investigation of that case, conscious of innocence, if that consciousness of innocence existed; that this surveillance which you authorized, which you directed, against the jury who were the triers, who were the exclusive judges of the facts as to whether or not you were guilty or innocent of the crime laid in the indictment, they were subjected to this surveillance by your authority and by your direction, and you must, as far as this Court is concerned, suffer the penalty for your course.

The sentence of the law is that you be imprisoned in the Washington Asylum and Jail for a period of six months.

Mr. Hoover: If your Honor please, on behalf of Mr. Sinclair, we desire in open Court to note an appeal to the Court of Appeals of the District of Columbia from the judgment of the Court finding the respondent guilty of contempt, and from the imposition of the sentence which becomes the judgment of the Court in so far as that is concerned. We ask your Honor to fix the amount of the undertaking which will act as a bond for costs, and I take it that would be an undertaking of $100 or a deposit of $50 with the Clerk, as usual; and then we ask your Honor to fix the amount of the recognizance on which the respondent will be at liberty pending appeal to the Court of Appeals.

The Court: What suggestion have you to make, Mr. District Attorney?

913 Mr. Gordon: Five thousand dollars, your Honor.

Mr. Douglas: And in open Court I announce an appeal on behalf of the respondents William J. Burns and Sherman Burns, and ask your Honor to fix these respondents' bond and have the amount of the recognizance fixed for both of the Burns respondents. What do you say, Mr. Gordon?

Mr. Gordon: A thousand dollars in each case.

Mr. Wright: Mr. Day notes an appeal to the Court of Appeals, may it please your Honor, and makes the same application, both as concerns the cost bond, which I assume will be as usual, and the amount of the recognizance. The recognizance ought to be a formal matter in this case,

No. 4819
Mary F. Sandoval, et al.
vs.
United States



No. 4819
Harry F. Sinclair, et al
vs.
United States.




320'
320'

No. 4818
Harry F. Sinclair, et al.
vs.
United States.

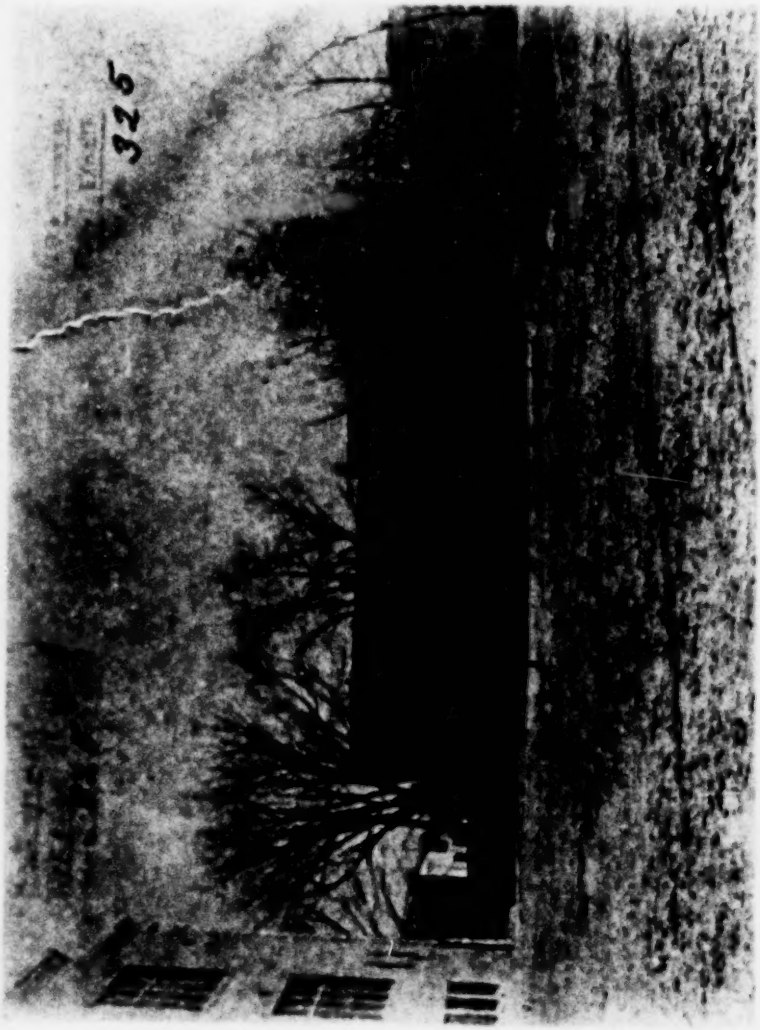


No. 4819
Guy F. Sinclair, et al.
vs.
United States.
Runner South.
9th STREET
WEST
7th STREET
EAST.

No. 4813
Harry F. Sinclair, et al.
vs.
United States.



No. 4812
Harry F. Sinclair, et al.
vs.
United States.



No. 4819
Harry F. Sinclair, et al.
vs.
United States.



No. 4319
Harry F. Sinclair et al.
vs.
United States.

No. 4819
Harry F. Sinclair, et al
vs.
United States.



No. 4819
Harry F. Sinclair, et al.
vs.
United States.



No. 4019
Harry F. Sinclair, et al.
vs.
United States.

926

U.S. EXHIBIT

APPLICATION AND HISTORY OF EMPLOYEE

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, Inc.
Office Position Date July 25-1925

Name in full Mr. William William James City West Chester
Residence address #6739 Street Rising Sun Ave City Phila. R
Age 29 Height 5-9½ Weight 209 Build Stout
Place of Birth Phila. County and State Phila. Pa.
Nationality American Married or Single Married
Languages spoken or written English
Cities having resided in Phila

Schools and Colleges Attended Business Prep School Rutgers State College
Is your eyesight good? Yes Do you use glasses? No
Trades
Profession
Former occupation

State full name, secret, political, military or labor organizations you are or have been a member of, if membership ceased, state when and why 177 [illegible]

1. State names of relatives and friends employed on railroads, their relations to you and positions they occupy None

2. If you have been in the Police or Detective business, governmental or private, state for whom employed and reasons for leaving None - Left Phila Police Dept. to enter Federal

3. Give names of relatives connected with Police or Detective business, governmental or private, stating positions occupied, with whom and where, also names of Police or Detective officials with whom you are acquainted Capt. A Schoonover Chief C.O.N.J. State Tr. - Trenton, N.J. Captain J.J. Lee Chief Atlantic City Trenton, N.J. Captain Hamilton Chief Phillipsburg N.J.

4. If previously employed by this Agency, state in what capacity, when and where, name of manager and reasons for leaving

5. Give names of anyone with whom you are acquainted who is or has been employed by THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, Inc. Mr. Edward Healy

Have you ever been complained of, indicted for or convicted of any violation of the law or ordinance? If so, state fully the particulars of each occasion and the disposition made of each charge

(This original application must be in applicant's own handwriting. Any additional information can be written on plain sheet and attached.)

State in chronological order Names and Addresses of firms or schools where you have been employed, dates with each, reason for leaving and name and position of party to be applied to for reference.

No.	From Month	From Year	To Month	To Year	Firm or Individual and Position	Street Address City and State	Nature of Occupation	Reason for Leaving	Name and Position of Reference
	—		May	1917	Attending School				
1	May	1917	July	1920	Air Service	U.S. Army	Sgt 1st Class	Honorably Discharged	
2	Sept	1920	June	1922	Chauffeur Mrs Carlo	3430 Chestnut St Phila Pa	Chauffeur	Discharged	H B Hall Manager
3	Sept	1922	Sept	1924	Private State Police	Harrisburg Pa	Trooper	Completed Enlistment	Col S C Lauman Superintendent
4	Sept	1924	Feb	1925	Student Secret Service	1338 Chestnut St Phila Pa	Operative	Discharged	Maj Sheetz Principal
5	March	1925	July	1925	New Jersey State Police	Trenton, N.J.	Trooper	Resigned	Capt T C Lamb
6									
7									
8									

State Names and Positions of Relatives, not former employers

Name	Address	Occupation	How Long Known
Mr Roy Hendrick	Retired Inspector	1332 E Tioga St Phila Pa	Life
Mr Robt Hooven	Chief of Police	Springfield Township Montgomery County Pa	15 yrs
Mr Thomas Moriarty	Retired Inspector	1337 Stiles St Phila Pa	18 yrs

State briefly the causes of your leaving During most of my service I was Supt of Police, State Motor Police and Bureau of Criminal Investigation, Pennsylvania State Police. I left the service to accept the position of Commissioner of Public Safety of Philadelphia.

Manager's comments

No. 4619
Harry F. Sinclair, et al.
vs.
United States.

APPLICATION AND HISTORY OF EMPLOYEES

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, Inc.

Office PHILA Position INVESTIGATOR L-30

Date Sept 30-1927

Name in full Wilbur V. Young Color White

Residence address 1804 Rosedale Street Oakdale City Phila Pa

Age 30 Height 5-8 Weight 190 Build Stout

Place of Birth Phila County and State Pa.

Nationality American Married or Single Married

Language spoken or written

Cities having resided in Phila, Ham Antonio Tex. Chicago Ill Atlantic City Pa Grand Rapids Pittsburgh Pa

Schools and Colleges Attended High School College 1 year

Is your eyesight good? Yes Do you use glasses? No

Trades

Professions

Former occupation U.S. Cavalry Sergeant Ex Secret Service Phila

State full name, secret, political, military or labor organizations you are or have been a member of.

If membership ceased, state when and why American Legion

1. State names of relatives and friends employed on railroads, their relations to you and positions they occupy None

2. If you have been in the Police or Detective business, government or private, state for whom, time employed and reasons for leaving Pa. Secret Service Phila Police 6 yrs. Sheriff

3. Give names of relatives connected with Police or Detective business, government or private, stating positions occupied, with whom and where, also names of Police or Detective officials with whom you are acquainted Brother D.J. Pittenger Sheriff

Wm J. Lentz Chief Police Atlantic City N.J.

4. If previously employed by this Agency, state in what capacity, when and where, name of manager, and reasons for leaving No

5. Give names of anyone with whom you are acquainted who is or has been employed by THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

Have you ever been complained of, indicted for or convicted of any violation of the law or ordinances? No If so, state fully the particulars of each occasion and the disposition made of each charge

(This original application must be in applicant's own handwriting. Any additional information can be written on plain sheet and attached.)

927

State in chronological order Names and Addresses of firms in whom employed you have been, showing nature of employment, date with each reason for leaving and name and position of party to be applied to for reference.

No.	From Month	From Year	To Month	To Year	Firm or Individual and Business	Street Address City and State	Nature of Employment	Reason for Leaving	Name and Position of Reference
1	Aug	1927	Jan	1931	Wade Chemistry and Electrical Co Ltd	59 N 2nd Street Phila	Chem Asst.	Position Closed	Wade C.K. Chem Eng
2	Jan	1931	Aug	1931	New Jersey State Police	Trenton N.J.	Sergeant State Police	Resigned	Colonel H.J. Schwarzkopf Trenton N.J.
3									
4	H.J. Allen Hqrs.								
5									
6									
7									
8									

State Names and Positions of References, not former employers

Name	Business	Address	Date Last Seen
Smith Edge	Insurance	Equitable Ins Co Trenton N.J.	5 yrs
D.J. Tull	State Police	Trenton N.J.	3 yrs
Captain Mc Nash	New Jersey State Police	New Jersey State Police Hdqrs Trenton N.J.	6 yrs

Highest duty the object of your travels

Place Reason

Comments of examiner

Manager's comments

No. 4814
Harry F. Sinclair, et al.
vs.
United States 928

APPLICATION AND HISTORY OF EMPLOYEE

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, Inc.
Office Position

Name in full Mrs Mullin William James Date July 27-1905
Residence address 6239 Stone Rong Sec Rd Class Whitby
Age 38 Height 5-8½ Weight 208 Build 3 Eyes Philada
Place of Birth Phila County and State Phila Pa
Nationality American Married or Single Married
Languages spoken or written Eng Ger
Cities having resided in Philada

Schools and Colleges Attended Burnes Prep School Penna State College 19
Is your eyesight good? Yes Do you use glasses? No
Trades
Profession
Former occupation
State full name, address, political, military or labor organizations you are or have been a member of (if membership ceased, state when and why) 1st Penn Squad A.
Philadelphia Secret Service Reserve Assn 1 year

1. State names of relatives and friends employed on railroads, their relations to you and positions they occupy None

2. If you have been in the Police or Detective business, government or private, state for whom, time employed and reasons for leaving Penna State Police 3 yr

3. Give names of relatives connected with Police or Detective business, government or private, stating positions occupied, with whom, and where; also names of Police or Detective officials with whom you are acquainted Colonel Sod... Capt. H. J. State Police Capt H J Capt. S. J. Capt. H. J. Capt. H. J. Capt. H

	From	To	Place of Employment and Position	Name Address City and State	Name of Supervisor	Reason for Leaving	Name and Position of Witness
		May 1917	attending School				
	May 1917	July 1920	Pier Service	U.S. Army	Sgt 1st Class	Honorable	Discharge
	Sept 1920	June 1922	Clerk Det Co E	3932 Chestnut St Phila Pa	Solomon	Resigned to take other work	H.H. Hall Manager
	Sept 1922	Sept 1924	Patrolman	Harrisburg Pa	Thompson	Enlisted in Army	Capt. [illegible]
	Sept 1924	Feb 1925	Shell Sorter	1839 Chestnut St Phila Pa	Operator	Discharge	Harry Hall Principal
	March 1925	July 1925	Patrolman	Trenton NJ	Thompson	Resigned	Capt E C Lee

	Name	Address	Business	Years Acquainted
1.	Wm Roy Eberhart	Police Inspector	933 S. Penn St Phila Pa	Life
2.	Mr. Walter Keenan	Chief of Police	Springfield Township Montgomery County Pa	6 yrs
3.	Thomas Moriarty	Police Inspector	1837 Ridge Ave Phila Pa	8 yrs

Having served in the Dept of Public Safety Phila Pa for three years I am familiar with the character of the work performed by the employee and the degree of success attained.

Harry Hall
Principal

No. 4819
Harry F. Sinclair et al.
vs.
United States.

U. S. v. Sinclair et al
RESPONDENTS' EXHIBIT
for ident. 15

OHIO PENITENTIARY

Record and Statement Furnished by Bertillon Department.

Registered No. 46469 Name William Mc'Mullen

Alias William James Mc'Mullen (RS) Fred Mc'Mullen

County Cuyahoga Received 3-26-1920

Crime FORGERY

Sentence Indt. Short time 1-20

DESCRIPTION

Age 31 Height 6 1/4 Foot Inches Weight 146

Nativity Lowndale, Phila, Pa Complexion Sallow Color of Eyes Bl. Bl.

Hair M. Br. Th. Occupation School Teacher, & Aviator.

Education 2 yrs. Penn. State College. Use Intoxicants No.

Accomplices in crime ••••••••••

Married No

Name and Address of nearest Relative or Friends

Father- James Mc'Mullen.....dead.
Mother- Freda Mc'Mullen 4239 Rising Sun Ave., Lowndale, Phila, Pa.

Criminal History ••••••••••••••••

Statement of Circumstances Given Department by Prisoner

#46469, Mc'Mullen, states he was born at Lowndale, Phila, Pa. Educated to 2 1/2 yrs. College; Is a School Teacher, and served as Capt. of Aviators. (2nd Aero Squadron Service U.S.A. during World War. That he came to Cleveland, O. about 2-25-1920, and had just secured a position as a Base Ball coach and teaching at Concord State Normal at Athens West Va. Further states, he forged a check on the Los Angeles, (Cal) Trust and Saving Co. Bank for $150.00 and signed it as Fred Mc'Mullen (his cousin) and, passed it at the Union Hotel and secured the full amount.. Also passed one for $75.00 on the (Holl'den) Hotel) check . and secured the full amount.

No expense; Well trained & educated

Signature of Prisoner

By P. J. Reale
DEPT. OF BERTILLON

929

No. 4610
Harry F. Sinclair, et al.
vs.
United States.

U. S. Supreme Court
RESPONDENTS' EXH

Certificate of Parole

Know all Men by these Presents. That by Virtue of the Authority Vested in THE OHIO BOARD OF CLEMENCY by the Legislature of the State of Ohio Pursuant to the Rules adopted by said Board, consent is hereby given

Mr. H. Fallon ..... Serial No. 48469 ..... Parole 3604

to go out on Parole outside the limits and confines of the Ohio Penitentiary subject to his employers.

And to remain in the legal custody of said Board until legally discharged.

A prisoner when released on parole by the Board, shall proceed at once to the place of employment for him and report to his employer unless for the satisfaction of parole and release is for reasons of practicable the terms of his parole. He must not leave or attempt to change his employment or residence he shall first the written consent of the Parole Officer or Record Clerk.

The said prisoner shall on the first day of each month until his final release according to law, forward to the Parole & Record Clerk, Ohio Penitentiary, Columbus, Ohio, a report, stating whether he has been employed any during the last month and, if not, why not, how much he has earned and expended, together with a general of his surroundings and prospects.

He shall at all times while released on parole remain [illegible] Gilbert the boundaries of the State of Ohio, an all inquiring conduct himself honestly, avoid evil associations, obey the law and refrain from the use of intoxicating as a beverage. That you make regular reports to this institution the 1st each month for six months. That you remain out of ohio for 10 full years.

[illegible] the Parole Officer, any serious upon parole has violated the of his parole, said person shall be arrested by the Parole or other authorized officer without warrant or other and conveyed to the Warden of the Ohio Penitentiary. Said Warden shall make a report in writing to the Ohio Clemency, upon the next parole day following, and if it is found by the said Board that he has violated the of his parole, the Board, [illegible] shall be entered in the journal of its proceedings revoke the parole of such person to further all the good time.

Issued at the office of the Parole & Record Clerk, Ohio Penitentiary,

Columbus, Ohio, this 20th day of April, 1921.

THE OHIO BOARD OF CLEMENCY

Thomas McMahon
Chairman

ATTEST

[illegible]
Parole & Record Clerk

U.S. v. Sinclair et al,
RESPONDENTS' EXHIBIT
For Identification No. 16.

Certificate of Parole

APR 30 1921 19

I hereby accept the conditions of the Parole

Wm. S. [illegible]

PAROLE NO. 3684

No. 9847
Henry F. Sinclair, et al.
vs.
United States

U. S. v. Sinclair et al
RESPONDENTS' EXHIBIT
For Identification 17
here

The State of Ohio, }
Cuyahoga County, } ss.

I, W. B. Ketteringham, the publisher of THE COLLINWOOD NEWS, being duly sworn, do upon my oath, depose and say that the annexed advertisement was published in THE COLLINWOOD NEWS, a newspaper printed in said County of Cuyahoga, and of general circulation in the County aforesaid, for the period of three consecutive weeks, from and after the 11th day of Feb A. D. 1921, the first publication having been made on the said 11th day of Feb A. D. 1921, and the last on the 25th day of Feb A. D. 1921.

W B Ketteringham

Sworn to before me and subscribed in my presence by the said W. B. Ketteringham, this 26th day of Feb A. D. 1921.

Harold E. Emrich
Notary Public.

Application for Parole.

Notice is hereby given that William McMullen, #9869, a prisoner now confined in the Ohio Penitentiary, has been recommended to the Ohio Board of Clemency, by the Warden and Chaplain as legally eligible to a hearing for parole. Said application will be for hearing on and after March 25, 1921.

W. I. BISHOP, Chief Clerk.

2t feb 11-18-25

931

because there will be no question about the appearance of the respondents. Did I understand you to suggest a thousand dollars in each case, Major?

Mr. Gordon: I did in the other case, the case of the Burnses. I think it ought to be the same as Mr. Sinclair, five thousand dollars.

Mr. Wright: I do not think there is any necessity of making a substantial bond, your Honor. It only submits the respondents to the necessity of paying a higher premium. No bond is really necessary to assure their appearance.

The Court: What is your suggestion about the bond with respect to Mr. Burns?

Mr. Gordon: A thousand dollars each.

The Court: Remember that in the case of Sherman Burns there was a fine. Your suggestion is still the same—a thousand dollars?

Mr. Gordon: Yes.

Mr. Douglas: Yes, I think that will be all right, your Honor.

914 The Court: And as to each respondent the undertaking with respect to costs will be the usual amount, $100, and with respect to the respondents Burns it will be a thousand dollars each, and I think with respect to Mr. Day a recognizance of $3,000, and with respect——

Mr. Wright (interposing): How many thousands, your Honor?

The Court. Three thousand dollars, and with respect to Mr. Sinclair five thousand dollars.

Whereupon the hearings in this case were concluded.

(Here follow photostats of pages 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, and 931.)

932 And be it remembered that the foregoing contains the substance of all the evidence given on the trial of said cause, and each and all of the exceptions stated to have been taken by the several respondents were so taken and were duly allowed by the court and entered upon the

minutes of the court; and, in order that each and all of said exceptions may be preserved and made a part of the record in this cause, this bill of exceptions is duly dated, approved, signed and ordered to be made of record in the above-entitled cause this 17th day of July, 1928.

F. L. SIDDONS,
Justice.

This Bill of Exceptions is satisfactory.

LEO A. ROVER,
United States Attorney.
MARTIN W. LITTLETON,
GEORGE P. HOOVER,
Attorneys for Respondent Harry F. Sinclair.
DANIEL THEW WRIGHT,
Attorneys for Respondent Henry Mason Day.
CHAS. A. DOUGLAS,
JO. V. MORGAN,
Attorneys for Respondent William J. Burns and W. Sherman Burns.

Endorsed on cover: District of Columbia Supreme Court. No. 4819. Harry F. Sinclair et al. vs. United States. Court of Appeals, District of Columbia. Filed Aug. 27, 1928. Henry W. Hodges, clerk.

In Court of Appeals of the District of Columbia, April Term, 1928.

No. 4819.

Harry F. Sinclair, Henry Mason Day, William J. Burns, W. Sherman Burns, Appellants,

vs.

United States

Stipulation to Addition to Record—Filed December 20, 1928.

It is hereby stipulated by and between the parties hereto in the above entitled cause that the following be added to the Transcript of Record in the above entitled cause:

Volume 2, page 163:

Mr. Douglas: I will not be permitted to show as to whether or not William J. Burns and Sherman Burns had anything to do with securing that affidavit. I do not care to do anything more than to let your Honor at least know that we think there is great merit in his defense in this matter as to that. I do not care to discuss with your Honor the question of whether or not William J. Burns knew this man or not four or five days before that affidavit was made; but the fact is alleged here that this affidavit was made on November 3rd, and was filed with your Honor or handed to the court on that day. I do know, and I think it is not improper to call attention to that fact, that that affidavit was filed in the Clerk's office in the case against Sinclair and Fall on the 9th day of November.

The Court: It was filed by the court. I filed it. It was never asked to be filed, and I filed it.

Chas. A. Douglas, Attorney for Appellants. Neil Burkinshaw, Asst. U. S. Attorney.

Minute entry of argument and submission February 7th and 8th, 1929, omitted in printing.

In Court of Appeals of the District of Columbia

No. 4819

Harry F. Sinclair, Henry Mason Day, William J. Burns, W. Sherman Burns, Appellants,

vs.

United States, Appellee

Certification to the Supreme Court of the United States—Filed Feb. 20, 1929

Statement of Case

The Court of Appeals of the District of Columbia certifies that the record in the above entitled cause discloses the following:

On February 21, 1928, the Supreme Court of the District of Columbia, after a protracted trial, found appellants guilty of contempt and sentenced appellant W. Sherman Burns to pay a fine of One Thousand Dollars, William J. Burns to be imprisoned in jail for a period of fifteen days, Henry Mason Day for a period of four months, and Harry F. Sinclair for a period of six months.

The facts here deemed material, stated in narrative form, are substantially as follows: Shortly after noon on October 18, 1927, in the Supreme Court of the District of Columbia, before the Honorable Frederick L. Siddons, Associate Justice of that Court, a jury was sworn in the case of United States v. Harry F. Sinclair and Albert B. Fall, wherein the defendants were charged with conspiracy to defraud the United States. The trial continued until November 2, 1927, when the jury was discharged from further consideration of the cause and a mistrial declared because sworn charges had been made of alleged misconduct of the juror Kidwell, and also that the jury had been shadowed by operatives of the William J. Burns International Detective Agency.

At about three o'clock on the day the jury was sworn (October 18, 1927) Sinclair made known to his assistant, Day, "that he wanted from 12 to 14 operatives, with a lieu-

tenant and a captain, sent to Washington to cover those who were sworn as jurors in this case", and directed Day to have one of the secretaries telephone a New York representative and ask him to have "one of the Burnses" communicate with Day. A secretary called the New York agent, who in turn put in a call for W. Sherman Burns at the main offices of the Burns Detective Agency in New York. Burns then telephoned Day in Washington, and also instructed Charles G. Ruddy, manager of the Burns Agency in Philadelphia, to go to Washington and present himself to Day, from whom he would receive instructions. Ruddy came from Philadelphia to Washington, using the name of Jeffries by pre-arrangement, met Day at the home of a resident of Washington, and Day made known to him his desire to have a sufficient number of operatives to keep the jury under surveillance. Day handed Ruddy a list of jurors containing a brief personal history of each. This list Day had received from Sinclair on the afternoon of October 18, 1927, at the time he was instructed to employ the Burns Agency. The description of three jurors, Kern, Kidwell, and Glasscock, follows:

"John P. Kern, white, Age 30, 1315 North Carolina Ave., N. E., salesman for Holmes Baking Co. Protestant, organizations none, married, one child. This juror was born in Washington, a family of bread bakers and bread wagon drivers, his father was a baker (C. Kerns and Sons) (German descent). This boy and his brother have driven bread wagons for Holmes & Sons since becoming of age. He was educated in local schools, grade but not high. He is quite a sport. Will go to the races whenever he can. Takes a drink and takes a chance on any kind of bet. No Government connections. My informant states that he does not think Kern ever served on a jury before.

"Edward J. Kidwell, Jr., white, age 25, 1637 You Street, S. E., work for Knessi, leather goods, Protestant, organizations none. Single. This young man is the son of Edrans J. Kidwell who for 30 years has been employed (general labor) at St. Elizabeth's Insane Asylum. Juror has a brother who is a barber. Since becoming of age he has worked for Knessi Bros., (Trunks and Leather Goods, 409 7th Street.) He was born in Anacostia, D. C. Educational local schools. As a boy he was pretty wild, drink-

ing and running around with rather a tough crowd. He has quieted down a little now but is still 'a sport.'

"Norman L. Glasscock, 1013 8th Street, N. W., age 47. Rec. Clerk Somerville Co. He is married and they have two children. Been residing at this address for several years. This address is an old frame shack, poor appearance, dirty general condition and in downtown rooming house district. Part of the house is occupied by others. He has been employed by the Thos. Somerville Co., 312 13th Street, N. W., wholesale plumbers supplies, as a receiving clerk at $40 weekly and has been with the firm for 15 or 18 years. He is said to be a big, fat lazy chap who takes the easy side of life, loves to fish, does a lot of loose talking and cursing, and has no particular political or religious affiliations. He takes no pride in his personal appearance. He and his whole family go down in the country every Sunday in their old car and fish. The records show an old unpaid judgment standing since July 16, 1924, for $12 due the Washington Business Bureau."

Day also instructed Ruddy, who was to have charge of the operatives, that he (Day) would require daily reports of the operatives to be made to himself through Ruddy.

On October 19, 1927, or very soon thereafter, fifteen operatives, including Ruddy, had assembled in Washington and been assigned to the work of shadowing eleven of the twelve members of the jury from the time they left their homes in the morning until late at night. Before beginning operations the credentials of the operatives, evidencing their connection with the Burns Agency, were taken from them and each operative was designated by a certain symbol and not by his name, and he so signed his daily report. These reports were in the handwriting of the operatives, and Ruddy had them edited and copies made on the typewriter; the original reports were retained, and the typewritten, edited copies were given to Day, who in turn brought to the attention of Sinclair such as he deemed of importance. Practically all the original reports contained statements to the effect that the jurors were being shadowed by no one other than the Burns operatives. These statements were deleted from the edited and typewritten version that went to Day.

In the list furnished Day by Sinclair, allusion was made to the juror Flora as "bullheaded." This juror was not shadowed.

After a few days the number of operatives was materially reduced, and by Day's instructions only jurors Kern, Kidwell and Glasscock were subjected to further espionage. This came about, according to Day, as the result of a conference he had had with Sinclair concerning these jurors, when Sinclair expressed the view "that it might be a good idea to find out if Kidwell and Kern were really substantial citizens."

O'Reilly, next in command to Ruddy, by Ruddy's direction went to Anacostia in search of a barber named Kidwell. He consulted the city directory and went to 1637 U Street S. E. the address of the juror Kidwell as given in the list of jurors which Sinclair had turned over to Day and Day to Ruddy. O'Reilly represented himself to be an employee of the District of Columbia Health Department visiting the premises for the purpose of having some papers signed in connection with the barber shop operated by Kidwell's father. He had a brief conversation with Mrs. Kidwell, the juror's mother, but the juror was not mentioned nor was he at home at the time. O'Reilly thereupon went to the barber shop of Kidwell's father where he made inquiries about a person named Stewart. The purpose of the visit to the barber shop, according to O'Reilly, was to find out the place of business and description of the barber named Kidwell "so as to be able to identify him, if necessary, at some later date." Ruddy informed O'Reilly that "this barber was a brother of the juror."

Later O'Reilly visited the District Building and the office of the Recorder of Deeds to ascertain what, if any, encumbrances were on Kern's home, as well as the identity of those holding the encumbrances. It was discovered that the $4,000 trust on Kern's house had been materially reduced at the time of the inquiries.

The evidence does not disclose that any of the operatives were instructed to approach or approached a juror, nor does it disclose that any juror knew that he was being shadowed. It does not appear that any request was made by counsel for appellant Sinclair to have the jury locked up during the progress of the trial. The Court did not

know, nor did counsel for appellant Sinclair know, that the jury was being shadowed.

Day testified that the first conversation he had with Sinclair upon the subject of shadowing the jury was about 3 p. m. on October 18, 1927, "after Mr. Sinclair had come back from Court. • • • We were at the Mayflower Hotel in Suite 1031, and Mr. Sinclair stated that he was terribly disappointed that the jury had not been locked up, and that he was very much exercised, that some of his enemies, competitors, and those who had written us so many malicious letters might in some way try to influence this jury, and stated he wanted me to tell one of the secretaries to call up Jeffries in New York and ask him to have one of the Burnses communicate with me at a place which would be convenient for me, and that he wanted from 12 to 14 operatives, with a lieutenant and a captain, sent to Washington to cover those who were sworn as jurors in this case. He said they were to cover these jurors, not to approach them, not to speak to them, not to in any way come in contact with them. They were simply to observe and report any suspicious acts which in their opinion might be done by the respective jurors, or those coming in contact with them, and to report also, if it was feasible, the people who did come in contact with them in a way which the operatives could do without arousing any suspicion. That is the substance of the instructions."

Sinclair did not testify, but the testimony of the operatives is to the effect that each was instructed in accordance with Sinclair's directions to Day.

Counsel for appellants offered to prove that for a number of years it had been the usage and custom of the United States in criminal causes to have agents of the Bureau of Investigation of the Department of Justice shadow jurors during the progress of trials, and that this was known to appellants. This evidence was offered for the purpose (a) of purging appellants of contempt, and (b) in mitigation of punishment. The Court excluded it.

At the close of the Court's decision, he said: "I cannot escape the conviction, therefore, that respondent Sinclair, respondent Day, respondent Sherman Burns and respondent W. J. Burns, have been, perhaps in different degrees, all involved, more or less directly involved, in the estab-

lishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this Court. If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publication of the affidavit regarding it, but at least in part, necessitated a mistrial."

This Court respectfully certifies that the following difficult questions of law arise upon the record, the decision of which is necessary for the proper disposition of this cause; and, to the end that a correct result may be reached, desires the instructions of the Supreme Court of the United States upon those questions, to wit:

Questions Certified

Question No. 1. In a contempt proceeding based upon alleged improper shadowing of the jury by a defendant in a criminal trial in a court of the United States, was evidence pertinent and admissible to the effect that it had been a custom and usage of the United States in criminal prosecutions to have agents of the Bureau of Investigation of the Department of Justice shadow jurors during the progress of the trial and that this was known to defendant?

Question No. 2. May a defendant in a criminal trial in a court of the United States, without the knowledge of the Court, lawfully cause substantially all the jurors to be shadowed if such defendant has reason to believe that attempts may be made improperly to influence such jurors or any of them?

Question No. 3. May a defendant in a criminal trial in a court of the United States, without the knowledge of the Court, lawfully cause three of the jurors to be shadowed if he has reason to believe that such jurors may be subjected to improper influence by persons hostile to such defendant?

Question No. 4. May the shadowing of substantially all the jurors in a criminal trial in a court of the United States by twelve or more agents of a defendant, without the knowledge of the Court and when the Court has not di-

rected that the jury be locked up, be construed as misbehavior of such defendant so near the presence of the Court as to obstruct justice within the meaning of Section 268 of the Judicial Code of the United States?

Question No. 5. In a criminal trial in a court of the United States, may the shadowing from early morning until late at night of substantially all the jurors by twelve or fourteen of defendant's agents, who were required to make and did make daily reports to defendant of the movements in detail of the shadowed jurors, when the Court had no knowledge of such shadowing and had not directed that the jury be locked up, be construed as misbehavior of such defendant so near the presence of the court as to obstruct justice within the meaning of Section 268 of the Judicial Code of the United States, without proof that the defendant intended that any of the jurors should be approached, or that they were approached, or that they knew that they were being shadowed?

Respectfully submitted.

(Signed) Chas. H. Robb, Associate Justice. Josiah A. Van Orsdel, Associate Justice. Orion M. Barber, Associate Judge U. S. Court of Customs Appeals.

[File endorsement omitted.]

In Court of Appeals of District of Columbia

[Title omitted]

Order of Transmittal—Feb. 20, 1929

It is by the Court this day ordered that the certification of the Court of Appeals in the above entitled cause be transmitted to the Supreme Court of the United States for a determination of the questions therein certified. (The Chief Justice not participating.)

Per Curiam, February 20, 1929.

In Court of Appeals of the District of Columbia

[Title omitted]

Designation of Record—Filed March 8, 1929

The clerk will please prepare a transcript of record for the Supreme Court of the United States in the above-entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument.
3. Copy of certification.
4. Copy of order directing transmittal of certification.
5. This designation.
6. Clerk's certificate.

Martin W. Littleton, Geo. P. Hoover, Attorneys for Appellant Harry F. Sinclair. Daniel T. Wright, Philip Ershler, Attorneys for Appellant Henry Mason Day. Charles A. Douglas, Jo V. Morgan, Frederick H. Bryan, Attorneys for Appellants William J. Burns and W. Sherman Burns.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

In Supreme Court of the United States

[Title omitted]

Order Granting Motion to Bring Up Entire Record and Cause—March 8, 1929

On consideration of the motion to bring up the entire record and cause herein and advance the case for argument on Monday, April 22, next,

It is now here ordered that the said motion be, and the same is hereby, granted.

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT HARRY F. SINCLAIR AND DESIGNATION OF RECORD TO BE PRINTED—Filed March 16, 1929

Comes now Harry F. Sinclair, one of the appellants in the above-entitled cause, and states that the points upon which he intends to rely in this court in this cause are as follows:

Point 1. The trial court erred in denying the motion of the respondents to dismiss the petition of the United States and discharge the rule to show cause.

Point 2. The trial court erred in denying the motion of the respondents to dismiss the petition and discharge the rule at the close of the case in chief of the United States.

Point 3. The trial court erred in denying the motion of the respondents to dismiss the petition and discharge the rule at the close of the whole evidence.

Point 4. The trial court erred in adjudging the respondents guilty of contempt and in holding that the acts of the respondents obstructed or tended to obstruct the due administration of justice.

Point 5. The trial court erred in excluding evidence offered by the respondents to show that for a number of years it had been the usage and custom of the United States Government, in cases being prosecuted by the United States in the various circuits throughout the United States, to have the agents of the Bureau of Investigation of the Department of Justice actually to shadow jurors while they were serving as jurors in such cases.

Point 6. The trial court erred in excluding evidence offered by the respondents to show that the respondent Day knew that it was the custom and practice of the United States to have representatives of the Department of Justice shadow jurors actually serving in the trial of cases prosecuted by the United States in the Federal courts in New York.

Point 7. The trial court erred in excluding evidence offered by the respondents to show what the witness O'Reilly actually said on the occasion of his visit to the home and the barber shop of the father of the Juror Kidwell.

Point 8. The trial court erred in receiving over the objections of the respondents evidence by the Witness Kidwell, Jr., of conversations with an unidentified man in the Museum Grounds and at the door of the Court House.

Point 9. The trial court erred in receiving over the objection of the respondents evidence of the Witnesses Kidwell, Jr., and Heaton as to conversations among the jurors.

Point 10. The trial court erred in receiving over the objection of respondents evidence of the witnesses Kidwell, Jr., and his mother, Mary Pearl Kidwell, as to conversations between the Juror Kidwell and his mother and father during the time he was serving upon the jury.

And the appellant Harry F. Sinclair represents that the whole record, as filed, is necessary for the consideration of the case.

Martin W. Littleton, Geo. P. Hoover, Attorneys for Appellant Harry F. Sinclair.

Service of a copy of the foregoing statement of points on which the appellant intends to rely, and designation of record, acknowledged this 16th day of March, 1929:

Owen J. Roberts, Neil Burkinshaw, Asst. U. S. Atty., Special Counsel for the United States of America.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT WILLIAM J. BURNS AND DESIGNATION OF RECORD TO BE PRINTED—Filed March 19, 1929

Comes now William J. Burns, one of the appellants in the above entitled cause, and states that the points upon which he intends to rely in this court in this cause are as follows:

Point 1. The petition did not allege facts constituting contempt of court.

Point 2. There was no evidence adduced at the trial below upon which the findings of the court could be legally based.

Point 3. The trial court erred in admitting evidence of the operatives reports.

Point 4. The trial court erred in not admitting testimony as to the intent of this appellant.

Point 5. The trial court erred in admitting evidence of things done after the mistrial of the Fall-Sinclair criminal case and when there was no cause on trial before the court.

Point 6. The trial court erred in not admitting evidence that there was no consciousness of the surveillance in the mind of any juror.

Point 7. The trial court erred in admitting evidence of acts of persons not shown to be connected with any of the appellants or with those acting in their behalf.

Point 8. The court erred in limiting the cross-examination of Frank J. O'Reilly, a Government witness.

Point 9. There was no contempt of court committed by this appellant with respect to the preparation and filing of the McMullin affidavit.

Point 10. In view of the rulings and findings of the trial court, the court should have allowed the introduction of evidence concerning the practice and custom of the Department of Justice of the United States of shadowing juries in criminal cases.

Point 11. The trial court erred in admitting and considering testimony relating to the Kidwell-King-Akers incident, with which the appellants had nothing to do.

Point 12. The trial court erred in restricting the right of the appellants to discredit the Government's witness McMullin, both by limiting the cross-examination of the witness and by rejecting testimony concerning his previous life and relating to his fraudulent acts.

Point 13. The findings of law and fact made by the trial court in the decision at the conclusion of the case are erroneous.

Point 14. There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the shadowing of the jury in the Fall-Sinclair criminal case.

Point 15. There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the procurement and submission of the false affidavit of William J. McMullin.

Point 16. There is no evidence in the entire record to support the judgment below.

Point 17. The trial court erred in admitting and refusing to strike out the evidence of William J. McMullin to the effect that Charles G. Ruddy had told him, McMullin, that the alleged false affidavit of McMullin had been made under the instructions of this appellant.

And the appellant William J. Burns represents that the whole record, as filed, is necessary for the consideration of the case.

Chas. A. Douglas, Jo V. Morgan, Attorneys for Appellant William J. Burns.

Service of a copy of the foregoing statement of points on which the appellant intends to rely, and designation of record, acknowledged this — day of March, 1929.

————, Special Counsel for United States of America.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT W. SHERMAN BURNS AND DESIGNATION OF RECORD TO BE PRINTED—Filed March 19, 1929

Comes now W. Sherman Burns, one of the appellants in the above entitled cause, and states that the points upon

which he intends to rely in this court in this cause are as follows:

Point 1. The petition did not allege facts constituting contempt of court.

Point 2. There was no evidence adduced at the trial below upon which the findings of the court could be legally based.

Point 3. The trial court erred in admitting evidence of the operatives reports.

Point 4. The trial court erred in not admitting testimony as to the intent of this appellant.

Point 5. The trial court erred in admitting evidence of things done after the mistrial of the Fall-Sinclair criminal

Point 6. The trial court erred in not admitting evidence case and when there was no cause on trial before the court. that there was no consciousness of the surveillance in the mind of any juror.

Point 7. The trial court erred in admitting evidence of acts of persons not shown to be connected with any of the appellants or with those acting in their behalf.

Point 8. The court erred in limiting the cross-examination of Frank J. O'Reilly, a Government witness.

Point 9. There was no contempt of court committed by this appellant with respect to the preparation and filing of the McMullin affidavit.

Point 10. In view of the rulings and findings of the trial court, the court should have allowed the introduction of evidence concerning the practice and custom of the Department of Justice of the United States of shadowing juries in criminal cases.

Point 11. The trial court erred in admitting and considering testimony relating to the Kidwell-King-Akers incident, with which the appellants had nothing to do.

Point 12. The trial court erred in restricting the right of the appellants to discredit the Government's witness McMullin, both by limiting the cross-examination of the wit-

ness and by rejecting testimony concerning his previous life and relating to his fraudulent acts.

Point 13. The findings of law and fact made by the trial court in the decision at the conclusion of the case are erroneous.

And the appellant W. Sherman Burns represents that the whole record, as filed, is necessary for the consideration of the case.

Chas. A. Douglas, Jo V. Morgan, Attorneys for Appellant W. Sherman Burns.

Service of a copy of the foregoing statement of points on which the appellant intends to rely, and designation of record, acknowledged this — day of March, 1929.

————, Special Counsel for United States of America.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

AFFIDAVIT OF SERVICE—Filed March 19, 1929

DISTRICT OF COLUMBIA, ss:

Frederick C. Bryan, being first duly sworn, does on oath depose and say that he is above the age of twenty-one years; that acting on behalf of Chas. A. Douglas and Jo. V. Morgan, attorneys for the appellants William J. Burns and W. Sherman Burns in the above entitled cause, he attempted to serve copies of the Statement of Points to be Relied Upon by the Appellants W. Sherman Burns and William J. Burns, and the Designation of Record to be Printed in the above entitled cause upon Owen J. Roberts, special counsel for the United States in the above entitled cause, but that he found the office in the District of Columbia of the said Owen J. Roberts closed, and no one there to receive said service; that he thereupon on this day, to-wit, March 19, 1929, sent the said copies by registered mail to the

office of the said Owen J. Roberts at 1421 Chestnut Street, in the City of Philadelphia, State of Pennsylvania.

Frederick C. Bryan.

Subscribed and sworn to before me this 19th day of March, 1929. Gertrude Ellis, Notary Public, D. C. (Seal of Gertrude Ellis, Notary Public, District of Columbia.)

[File endorsement omitted.]

Endorsed on cover: File No. 34,057. District of Columbia Court of Appeals. Term No. 748. Harry F. Sinclair, Henry Mason Day, William J. Burns, W. Sherman Burns, vs. The United States of America. (Certificate.) Filed March 5th, 1929. File No. 34,057.

FILED
MAR 29 1929
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 748

HARRY F. SINCLAIR, HENRY MASON DAY, WILLIAM J. BURNS, W. SHERMAN BURNS,
APPELLANTS,

vs.

UNITED STATES.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLANT, WILLIAM J. BURNS, ON THE ENTIRE RECORD.

CHARLES A. DOUGLAS,
JO. V. MORGAN,
FREDERICK C. BRYAN,
Attorneys for the Appellant, William J. Burns.

DOUGLAS, OBEAR & DOUGLAS,
Of Counsel.

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BRIEF FOR THE APPELLANT, WILLIAM J. BURNS, ON THE ENTIRE RECORD.

Statement of the Case.

This case is before the Supreme Court of the United States upon certification to it by the Court of Appeals of the District of Columbia of certain questions of

law. After motion was made by the Government counsel which was joined in by counsel for the appellants, this Court made and entered the following order:

> *In Consideration* of the motion to bring up the entire record and cause herein and advance the case for argument on Monday, April 22nd, next,
>
> *It is now here ordered* that the said motion be, and the same is hereby granted."

This appellant, William J. Burns, was one of the respondents below and appeals from the judgment of the lower court finding him guilty of criminal contempt of court, and from the imposition of a sentence of imprisonment for a period of fifteen days in the Washington Asylum and Jail.

That part of the petition which relates particularly to this appellant states:

> "And that the said William J. Burns actively engaged in conducting the affairs of said agency, although not an officer of the same, was one of the founders thereof, and his wife holding forty-seven of the fifty shares of capital stock of said agency, that said William J. Burns, in said indirect fashion, receives monies and other benefits from the holding of said stock in his wife's name; and that the said William J. Burns visited the City of Washington, in said District of Columbia, with regard to the operations hereinbefore described of the agents of the William J. Burns International Detective Agency and remained in the City of Washington, to wit, on October 12th and 13th, 1927, and thereafter, to wit, on the third day of November, 1927, the said

William J. Burns returned to the City of Washington, in said District of Columbia, where he and the said W. Sherman Burns, in furtherance of said designs of said respondents, procured the making of a false affidavit purporting to show that a representative of the United States, Department of Justice, approached and held conversation with said Norman L. Glasscock, a juror in said cause, as aforesaid, and that the said William J. Burns and the said W. Sherman Burns, knowing said affidavit to be false and without truth and fact, did then and there procure the submission of said affidavit to said Honorable Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia, intending thereby to provide evidence, such as it was, that the United States of America, through one of its employees, had tampered with said juror in the case of United States vs. Harry F. Sinclair and Albert B. Fall, Criminal No. 43324 (Rec. 5).

Without fear of contradition from the Record, it can be positively and definitely stated that William J. Burns had nothing whatever to do with the surveillance of the jury in the Fall-Sinclair criminal case, nor was he consulted about it nor did he know that it was being done until after it had ended; and further, that he had nothing to do with, and knew nothing about, the making and filing of the so called McMullin affidavit, until it had been prepared, signed, sworn to and handed to Justice Siddons.

In its vain attempt to prove the charges against this appellant, the Government produced as a witness

Raymond J. Burns, a son of this appellant, and the President of the William J. Burns International Detective Agency, (hereinafter for convenience called the "Burns Agency"). Raymond J. Burns testified in substance as follows: The Burns Agency is a corporation, incorporated under the laws of New York in 1909. The witness and this appellant were the founders. At the time of the shadowing of the jury in the criminal case, the witness was President, and his brother, W. Sherman Burns, was Secretary and Treasurer (Rec. 671). There are three stockholders, Annie M. Burns, the wife of this appellant, who owns 47 shares, out of a total of 50; W. Sherman Burns, a son, who owns 2 shares; and Florence Seipel, a sister of this appellant, who owns 1 share. This appellant is retained by the Burns Agency in an advisory capacity at an annual fee of $5,200, which arrangement commenced in 1925, and is still in force, and entitles the Agency to call upon this appellant whenever it should be deemed advisable to consult with him. This appellant has no office at the headquarters of the Agency. He was formerly President, but resigned in 1921 when he entered the service of the Government as the Director of the Bureau of Investigation, and for the last two years has taken no part in the activities of the Agency. Sometimes this appellant comes to the office —possibly once a week, and maybe twice a month. This appellant has a real estate office "up town" in New York. The witness further stated that since he, the witness, had been President, and since this appellant's salary or fee as advisor had commenced in 1925,

this appellant has done no work in connection with the Burns Agency, not even as an advisor or consultant, unless his advice was solicited by the witness and his brother, W. Sherman Burns; *and that the appellant's advice was not sought nor given in connection with the particular employment of shadowing the jury in the Fall-Sinclair criminal case* (Rec. 672).

Charles G. Ruddy, another witness for the Government, stated:

> "To my knowledge William J. Burns has had no active connection with the Agency in the last two or three years. I have known him to sit in an advisory capacity on special cases. I do not know whether or not he was informed of this employment and consulted in any way about it. I did not advise with him about any phase of this particular work while it was in operation. I had no talk with him on the subject one way or the other until after the grand jury investigation started. I did not even know the whereabouts of W. J. Burns up to that time. I did not exchange words with him on the subject in the remotest fashion at any time before the warrant and the seizure of the records at the Wardman Park Hotel, nor until the Saturday following the Monday on which the raid was made." (Rec. 378) "I first talked to William J. Burns on Saturday the fifth of November, at the Woodward Hotel, New York City" (Rec. 381).

Government's witness Frank J. O'Reilly, who was Ruddy's assistant in the work of shadowing the jury, said on the witness stand:

> "I met William J. Burns for the first time in my life on the morning of November 7, 1927, upstairs in the court house, when I was on subpena to the grand jury. I requested that morning to be introduced that morning. As far as I know, he had nothing whatsoever to do with this matter." (Rec., 433.) "I first met William J. Burns Monday morning, November 7th. It was upstairs in this building." (Rec., 436.)

Counsel for this appellant admitted, without the necessity of proof, that this appellant was in Washington on October 12 and 13, 1927, and registered at the Willard Hotel. (Rec., 677.) *There was not even an attempt to prove that this appellant saw, conversed with, or had the slightest contact with Fall or Sinclair, or their agents while he was in Washington, or at any time or place. Nor is there the slightest evidence in the record of any such fact.* (The criminal trial of Fall and Sinclair commenced on October 17, 1927.)

Such was the sum and substance of all that the Government was able to prove regarding the connection of this appellant with the Burns Agency, and with the shadowing or surveillance of the jury in the Fall-Sinclair criminal case.

W. Sherman Burns, one of the respondents, took the stand in his own behalf, and testified concerning the connection of this appellant with the Burns Agency and of his lack of knowledge and connection with the shadowing of the jury in the Fall-Sinclair criminal case as follows:

> "Prior to 1921, W. J. Burns was president of the Agency, and, I think, a director. In 1921 he

resigned as president and director, and severed all connections with the agency, and took the position of Director of the Bureau of Investigation of the Department of Justice. On his resignation from the Government he would advise with us. He became adviser under a yearly retainer in 1925 or 1926, and that is the only connection he had. From 1921, when he resigned the position as director and president, to become Director of the Bureau of Investigation of the Department of Justice, down to his severing his connection with the Department of Justice, he had absoultely no connection with, and no participation in, the work of the Agency, advisory or otherwise. Then after he resigned his position as Director of the Bureau of Investigation of the Department of Justice he became advisor to the Agency. In that capacity he would make periodical visits to the office whenever we would request him, or whenever we desired to consult with him, and of course he had old clients who might want to consult with him from time to time; but it was a casual connection, and only when we sought his advice did he advance it. He did not come to the office of the Agency with any regularity. For example, the summer of 1927 he spent the entire time in Florida, directing his home there in Sarasota. I do not think he got back until the latter part of August or September. From January 1, 1927, until November 1, 1927, he was not in the office in an advisory capacity or any other capacity, any substantial number of times. He might come to the office once in 2 weeks. If there was any mail directed to him there one of our secretaries would call him on

the phone and tell him there was some mail, or might send it up. If a telegram came in for him, it would be opened and read to him over the telephone. That was mostly private correspondence. Raymond Burns did not have occasion to advise with W. J. Burns on the business of the Agency more than half a dozen times between January 1 and November 1 of 1927. I cannot recall any specific investigation that we had on which we sought his direct advice. We may have discussed the affairs of the organization not over half a dozen times. Between 1925 and the end of 1927, W. J. Burns took part in the affairs or business or activities of the Agency only when his advice was sought. I now remember one investigation he took part in as advisor in the spring of 1927. W. J. Burns had no place, no office, no desk or any of the other appointments of an occupant of an office, in our suite at 165 Broadway at any time during 1927. When he comes to the office he goes into Raymond Burns' office, or sometimes into my office. *I did not consult W. J. Burns before I accepted the employment of Mr. Day in this matter. I did not tell him that I was going to do it, or tell him afterwards that I had done it, at any time before the seizure of the records of the Agency at Wardman Park. I did not discuss this employment nor this operation with him until Tuesday, November 1, on the telephone, after the publicity of the seizure of the records. He did not have any knowledge whatever of the fact that the work was going on between October 18 and November 1.*" (Rec., 774, 775.)

Upon being examined by the court, W. Sherman Burns stated:

> "I think my father is about 65 or 66 years old. After he had severed his connection with the Agency and after he had also severed his connection with the Government service and returned home, he occasionally would consult or advise with some of his old clients. I can't remember any specific case during that time where he actually employed the Agency to do the work required by one of the old clients, but if an old client had requested him he would have referred him to the Agency. For some period after he left the Government service he was ill and in Europe. I can't recall any specific instances right now of his employing the Agency for an old client during that period." (Rec., 786.)

This appellant testified concerning the same matter as follows:

> "When I finished that I organized the William J. Burns International Detective Agency in 1909 and remained at the head of that until 1921. In August, 1921, I was appointed Director of the Bureau of Investigation of the Department of Justice and I resigned from there the latter part of 1924. Just before I resigned from the Burns Agency, I was president of the corporation. I resigned as president, and had no connection with the Agency whatever before I was appointed Director of the Bureau of Investigation. When I resigned from the Agency my son, Raymond J. Burns, succeeded me as

president, and Sherman Burns succeeded Raymond as secretary and treasurer of the corporation. That relationship has continued until the present time. I had no position whatever, advisory or otherwise, with the Agency while I was Director of the Bureau of Investigation. I am now connected with the Agency in an advisory capacity whenever I am called upon by my sons to pass on any matters that they may be handling that they want my advice on. I do nothing whatever in connection with the activities of the Burns Agency unless I am called upon, and then it is only for advice. I became advisor to the Agency in 1925. I have a retainer of $5,200 a year. Since I became advisor, I have not had an office in the Burns offices in New York, or anywhere else. I had desk room in 350 Madison Avenue as a licensed real estate broker. That has no connection, in location or otherwise, with the Burns Agency. I was not consulted, and did no work of any kind in the Agency in 1927, that I remember of. I was in New York in October, 1927. I was in the office of the Agency very, very seldom during the months of September and October. I was preparing to move to Florida. The offices of the Burns Agency in New York are at 165 Broadway. They had the same offices in 1927 and 1926. The Madison Avenue office was uptown, beyond 42nd Street. *I had nothing whatever to do with the employment of the Burns Agency by Mr. Day in October, 1927, and knew nothing about it until it was all over. The first I knew of it was on November 1st, the day after the Burns operatives were subpænaed before the grand jury, and after the search warrant*

was executed and the records seized. A newspaper man in New York called me on the telephone to inquire whether or not I desired to make a statement concerning the Washington matter. As I didn't know anything about any Washington matter in which they were interested, I inquired as to what it was and learned. That was the first time I had heard of the matter at all in any way. From the time of the employment on October 18th down to and including November 1st, I had had nothing to do with the matter and had no information concerning it at all. My advice had not been asked about it one way or the other." (Rec., 744, 745, 746.)

On cross-examination he stated:

> "I have known Harry F. Sinclair a number of years and have done detective work for him for a number of years. The Agency was not employed by him in some capacity at the time the Fall-Sinclair case was being tried." (Rec., 752.)

To meet the insinuation of suspicion, erroneous and unfounded as it might be, that this appellant came to Washington on October 12 and 13, 1927, in some relation to the employment of the Burns Agency, uncontradicted evidence was introduced by this appellant which conclusively showed that the visit to Washington on those days had no connection whatever with shadowing of the jury.

This appellant stated on the witness stand:

> "I came to Washington on Wednesday, October 12th about 8 p. m. in response to the tele-

gram that has been read here. I met Mr. Dadswell at the Willard Hotel and he and I went to the Radio Commission's office and were there until noon. The young lady testified that we were there about an hour. We were there from 9 o'clock in the morning until almost 12 o'clock. We went to see Admiral Bullard with a view of having the broadcasting station of the Financial Journal, that was then located in Tampa, Station WJBB, transferred from Tampa to Sarasota. We were given that privilege and it was transferred. I left Washington the afternoon of the 13th on the Congressional, and returned to New York. I was not here on any other business than this radio business, and I did not transact any other business. I cannot recall everybody that I saw here on that occasion. I was with Elmer Dover after I got through with Mr. Dadswell, and remained with him until we both went to the station. He went west and I went to New York. *I did not see Mr. Sinclair or Mr. Day while I was here, nor did I talk with either one of them. I did not talk with their lawyers or with anybody connected with the Fall-Sinclair case.* I was not in Washington on November 3rd, nor was I here at any time during the fall of 1927 before I came here on the 13th on the radio business, which was the first time I had been here for months. I was not here at any time between October 13th and November 6th. I did not give Ruddy any instructions of any kind or character pertaining to this operation by telephone, letter, or otherwise. I did not give any instruction to any of the operatives in connection with the work. I had no conversation with Mr. Sinclair or Mr.

Day in connection with the work done here in October, either before, while it was being done, or afterward. I had no part at all in making arrangements for the employment of the Burns Agency to do this work. I first saw Mr. Day when this proceeding started here on December 5th. I had never seen him before we assembled in court on that day. I had never talked with him before, nor had any communication with him before of any kind on any subject; no business talk with him, direct or indirect; no social or other kind of contact with him, direct or indirect, up to that day." (Rec. 750-751).

The testimony of Jack E. Dadswell, a resident of Sarasota, Florida, has such an important bearing on the case that we here quote it in its entirety:

"I live at 126 13th Street, North Street, Petersburg, Florida. I know William J. Burns. I was in Washington October 13, 1927. I had a business appointment with W. J. Burns and Admiral Bullard. I met Mr. Burns on October 13th, at about 8.45 a. m., at the Willard Hotel. I had made arrangements to meet Mr. Burns before coming here by telegraphing him from Sarasota, Florida to New York. (Witness was handed a paper.) This is the telegram I had sent to Mr. Burns. Mr. Hitchings is the president of the Bank of Sarasota and Chairman of the Radio Committee of the Chamber of Commerce of Sarasota. I was with Mr. Hitchings when he sent that telegram to Mr. Burns. I came here on behalf of the Chamber of Commerce of Sarasota, Florida. (Witness was handed a telegram from W. J. Burns to

Mr. Hitchings.) I received from the Western Union Telegraph Office before I left Sarasota and came to Washington this telegram, a telegram similar to this, giving this same substance, the time at which Mr. Burns would meet me at the place, and fixing the date. I do not think the telegram was addressed to me, but was addressed to the Chamber of Commerce, or to Mr. Hitchings, but in substance it was delivered to me, giving the time at which I was to meet Mr. Burns. I imagine the telegram was handed to me or shown to me, at least the contents of a telegram. I left Sarasota for Washington and I met Mr. Burns at a specified time, at a specified place in this city on a specified day in conformity with the telegram which was shown to me.

"Thereupon the respondents offered in evidence the following:

"RESPONDENTS' EXHIBIT No. 21."

"93N F Nw 47 Blue Xu.

Sarasota Flo 242P Oct. 10, 1927.

Wm. J. Burns,
Suite 1125 165 Bway.

Would it be possible for you to meet with Mr. Dadswell at Federal Radio Commissioners Office Washington DC and confer with Mr. Bullard Chairman Thursday morning at nine am stop very important as Dadswell is moving the Financial Journal broadcasing station from Tampa to Sarasota wire answer.

C. E. HITCHINGS,
325P."

The witness continued:

"I have not got the original telegram signed by Mr. Burns in New York and sent to Mr. Hitchings in Sarasota. It is in the files at the Chamber of Commerce in Sarasota. I saw the telegram that Hitchings sent Burns in New York, asking him to meet me in Washington on Thursday morning at the Radio Commissioner's Office. Before I came from Sarasota to Washington Hitchings or I received word from Mr. Burns to the effect that he would meet me here. This is the reason I came to Washington, as the result of that telegram from Mr. Burns. I got here about 7 a. m. on October 13th. I stopped at the Raleigh Hotel. I met Mr. Burns at the Willard at 8:45 and he and I went immediately to the Commerce Building, to the office of the Radio Commissioner. We were there from about 9 o'clock to about 12:30. One of the objects of the conference was to confer with Admiral Bullard at this place. I left Washington about 10 o'clock that night. I had a conversation with Mr. Burns near the Willard. After it, Mr. Burns went to his office in Washington and I went to the hotel. The conversation was just before we parted. The subject of that conversation was as to where I would be able to get hold of Mr. Burns during a certain period of that day." (Rec. 727, 728 and 729).

Lois I Stuntz, secretary to the late Admiral Bullard, stated in her testimony:

"I am employed by the Federal Radio Commission. I know William J. Burns by sight. I remember Mr. Burns being in the office of Ad-

> miral Bullard sometime in the fall, but I cannot state offhand the exact date. He was there on business with Admiral Bullard. Mr. Dadswell of Florida was with him. They were there possibly an hour or two. To the best of my memory they were there only once on this business." (Rec. 740).

The appellant, Henry Mason Day, who employed the Burns Agency, stated concerning the employment:

> "I never at any time had any contact by phone or personally, or any communication with W. J. Burns about this matter." (Rec. 832).

This completes the résumé of all the testimony, on both sides, concerning the connection, or the lack of connection, of this appellant with the employment of the Burns Agency in the surveillance of the jurors, prior to their discharge and to the mistrial in the Fall-Sinclair criminal case.

We now proceed to recount the evidence concerning the connection of this appellant with the procurement of the false McMullin affidavit, namely, the evidence relating to the charge in the petition that: " • • • thereafter, to wit, *on the third day of November, 1927*, the said William J. Burns, returned to the *City of Washington, in said District of Columbia*, when he and the said W. Sherman Burns, in furtherance of said designs of said respondents, procured the making of a false affidavit • • •."

This appellant emphatically stated on the stand that he was not in Washington on November 3, 1927, and that he was not here any time between October 13, 1927,

when he was about the radio business, and November 6th, when he came to testify before the grand jury, and that he had nothing to do with making of the false affidavit. (Rec. 750). W. Sherman Burns was not in Washington at all that Fall, until called before the grand jury on *November 6th, several days after the mistrial.* There is no evidence to the contrary in the entire record. *Indeed, it was admitted on the record by the District Attorney that this appellant and his son were not in Washington on November 3rd, and did not take part in the procurement of the false affidavit.* The following coloquy occurred during the trial below:

> "Mr. Douglas: I would like to inquire, if the District Attorney could see his way clear to answer it, whether or not he means by his statement to say that he intended to prove that W. J. Burns and Sherman Burns were here and caused this affidavit to be made by this man (McMullin).
>
> "Mr. Gordon: *No, they were not here at that* time." (Rec. 622.)

Thomas E. Lodge, an attorney who assisted in the preparation of the McMullin affidavit, and who later handed it to Justice Siddons, was placed upon the stand by the Government. Under the examination by the Assistant District Attorney he testified merely to the fact that on November 2nd, the day before the affidavit was prepared, and two or three days after the mistrial, he had a conversation over the long dis-

tance phone with this appellant (Rec. 664). On cross-examination by the attorney for this appellant the witness was asked this question concerning that conversation:

> "Your conversation over the telephone was with reference to seeing the District Attorney, wasn't it?"

To that question the District Attorney objected, and the court refused to let the witness testify as to what was said, and an exception was duly noted. (Rec. 667.)

However, Lodge was later produced as a witness for this appellant, and testified concerning the topic of the conversation as follows:

> "My conversation with W. J. Burns on the long distance telephone was a week before Mr. Burns was down here before the grand jury. That conversation had no reference whatever to the McMullin or Long affidavit, and no reference to the conduct of the Burns Agency under the employment by Mr. Day. It did have reference to the newspaper articles then being published in the press that Mr. Burns thought were injurious to the Agency." (Rec. 739.)

Judge Daniel Thew Wright, who prepared the McMullin affidavit, was not called as a witness by the Government, but as a witness for the respondents. He said:

> "I have known W. J. Burns for 20 years, or longer. I had not seen him for a long time until one day after he had been subpœnaed down

here before the grand jury. He came into my office with his son Sherman. He said he was in town and just came in to pay his respects, and introduce me to Sherman. I came out and shook hands with them. That was during the week he was here as a witness before the grand jury, commencing November 7th. *I had no communication with the Burns, either direct or indirect, about this affidavit before it was prepared.* * * * *I had not talked with anybody who was connected with the Burns Agency, except Long, or McMullin, about drawing this affidavit, prior to the time it was drawn.*" (Rec. 736.)

McMullin when on the stand, under the direction of the District Attorney, testified concerning the making of the false affidavit:

"He (Ruddy) also told me it would be pretty bad for me if I did not go through with it. He said it was under the instructions of W. J. Burns.

"Thereupon a motion was made to strike out the last sentence, the motion was overruled, and an exception noted, and the witness continued:

"He said that W. J. Burns had given him instructions that he wanted this affidavit made for the client. * * * " (Rec. 623.)

At the conclusion of the Government's case, the above motion was renewed, but was overruled and exception noted. (Rec. 697.)

Ruddy, who had theretofore been used by the Government as one of its principal, if not its most im-

portant witness, testified when called as a witness for the respondents as follows:

> "At the time of the making of this affidavit on the night of the 3rd I had absolutely no doubt concerning the integrity or accuracy of this report of October 22nd, when the affidavit was drawn and signed and sworn to by McMullin. I did not request him to make that affidavit. I did not tell him that W. J. Burns wanted either the report of October 22nd or the affidavit made based thereon for the use of his clients. W. J. Burns never requested me, suggested to me the making of that affidavit. *I had not spoken to or seen W. J. Burns since the previous February.*" (Rec. 762.)

The next testimony which we proceed to recount is that relating to the charge that this appellant, together with his son, the appellant W. Sherman Burns, procured the *submission* of the McMullin affidavit to Justice Siddons on November 3, 1927; that is to say that portion of the petition which states:

> "* * * and that the said William J. Burns and the said W. Sherman Burns, knowing the said affidavit to be false and without truth and fact, did *then* (November 3, 1927), and *there* (Washington, D. C.), procure the submission of said affidavit to said Honorable Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia * * *."

We have hereinbefore shown that this appellant was not in Washington on November 3, 1927, and that the Government abandoned its charge that he was.

As has already been stated, Thomas E. Lodge, who submitted the affidavit to Justice Siddons, was called as a witness for the Government, and was permitted by the court to state merely that he had a conversation over the long distance phone with this appellant on November 2nd, the day before the submission of the affidavit, with all its unfair inference, without the corresponding right to this appellant on cross-examination to bring out what that conversation was. The Government brought out the fact also on direct examination that the witness had submitted the affidavit to Justice Siddons (Rec. 665), but on cross-examination by this appellant's counsel the following occurred:

> "I put nothing whatever in the shape of writing on the backs of those affidavits. Whatever endorsements were placed there after I had handed them to the Judge and by someone else that I do not know of. I had a very, very brief conversation with the Judge, if conversation is a mere sentence. I did not file those affidavits in the Sinclair-Fall case in the Clerk's office. I did not cause them to be filed by anyone.
>
> "Thereupon the following occurred:
>
> "Q. Did you request or direct anyone to file them?
>
> "The question was objected to, the objection sustained, and an exception duly noted.
>
> "Q. *Did you have any authority from William J. Burns, Sherman Burns or Vietsch or anyone else to file those affidavits?*
>
> "The question was objected to, the objection sustained, and an exception duly noted.
>
> "Q. When you handed these affidavits to Justice Siddons, what conversation did you have

with the Judge, or what did you say to him concerning these affidavits?

"The question was objected to, the objection sustained, and exception duly noted." (Rec. 668 and 669.)

When he was called as a witness for the appellants, he gave the following testimony:

"I was never authorized or directed either by William J. Burns or Sherman Burns, or Charles L. Vietsch to deliver those affidavits to Justice Siddons. I hadn't talked to them. I am reasonably satisfied, although not positive, that it was W. J. Burns, and not Raymond or Sherman who I talked to by long distance telephone on Wednesday preceding the week W. J. and Sherman Burns were down here. The subject was to the effect that the press was carrying at that time.

"Thereupon the conversation was objected to as incompetent, irrelevant and immaterial.

"Mr. Douglas: It is only for the purpose of rebutting any inference that the conversation of W. J. Burns had any reference to the affidavits, or any reference to his participation in the affairs of the Burns Agency. All I wish to do is to show what was the subject of that conversation.

"The objection was sustained, and an exception duly noted." (Rec. 738)

Later Ledge testified:

"My conversation with W. J. Burns on the long distance telephone was a week before Mr. Burns was down here before the grand jury.

> That conversation had no reference whatever to the McMullin or Long affidavit, and no reference to the conduct of the Burns Agency under the employment by Mr. Day. It did have reference to the newspaper articles then being published in the press that Mr. Burns thought were injurious to the Agency." (Rec. 739)

Ruddy, who consulted with Lodge in the matter of the affidavit, testified as a witness for the Government that this appellant had nothing to do with the affidavit, (Rec. 378), and that he "first talked with William J. Burns on Saturday, the fifth of November, (the day after the affidavit was handed to Justice Siddons) at the Woodward Hotel, New York City." (Rec. 381.) He testified substantially the same when called to testify for the appellants (Rec. 762).

The testimony of W. Sherman Burns hereinbefore stated is substantially to the same effect.

John R. Fitzpatrick, the Secretary to Justice Siddons, gave an account on the stand of the submission of the affidavit by Lodge to Justice Siddons. He said:

> "He handed those two affidavits to Mr. Justice Siddons, who thereafter handed them back to Mr. Lodge, who then handed them to me. I first put them in a place in the office and kept them under my personal supervision. Thereafter I took them and handed them to Mr. Justice Siddons. I never brought them to the Clerk's office, or caused them to be sent to the Clerk's office. The last I saw of them they were in the possession of Mr. Cunningham, the Clerk of this court, who was then in our office.

Mr. Justice Siddons handed them to Mr. Cunningham.

"Thereupon the witness was cross-examined as follows:

"When Lodge handed these two affidavits to the Justice, they were folded. Before handing them to the Justice he did not read them to him. Justice Siddons didn't read them while he had them in his hands before handing them to him. When Mr. Lodge handed those affidavits to Justice Siddons he said that he represented the Burns people. He used the name 'William J. Burns,' *but whether he used that as the name of an individual or part of the name of the Agency I am not now clear.* He stated that he presented—I use the word 'presented'—I do not attempt to quote the exact words; he may not have used it—the affidavits on behalf of the Burns people. He repeated that several times, using the phrase *'Burns people,'* and using the phrase *'William J. Burns,'* and also *'The International Detective Agency.'* He stated that they were for the information of the Justice. To the best of my recollection he did not also state that he felt it his duty as a member of the bar of the court to present these affidavits to the Justice. *I cannot tell whether he used the name 'W. J. Burns' as a corporate or an individual name."* (Rec. 695)

Although there was no charge that this appellant *filed* the McMullin affidavit, and although Justice Siddons stated in open court during the trial below that he, the court, had filed the affidavit (Rec. 1, Addition), the Government sought to prove that this appellant

filed the false affidavit, and introduced the following testimony of two newspaper reporters:

George E. Durno testified as follows:

> "I know W. J. Burns in a newspaper way. I saw him on the morning of November 7, 1927, in the corridor outside of the grand jury room. A number of other newspaper men were present. I saw W. J. Burns coming from the direction of the grand jury room. On the occasion of that meeting, a conversation ensued. He addressed all the newspaper men. W. J. Burns gave us copies of the affidavit signed by William V. Long. He said he had filed it with Justice Siddons on the Friday preceding and wanted to know why the Government had not done something about that. He said, 'All of our investigations show that the only tampering was done by the Government itself.' He said that the public was being misled into believing that the defense in the oil trial had no right to keep the jury under surveillance but that as a matter of fact as long as there was no approach, that the defense had the same privilege in that respect as the Government; that all of the Burns Agents had been honest and sincere." (Rec. 673-4.)

Edward J. Duffy testified:

> "I know W. J. Burns by sight. I saw him the day he testified before the grand jury. I am not able to fix the day. Mr. George Durno was present on that occasion, and there ensued a conversation. I was only there about the first five minutes. Mr. Stoddard and Mr. Burns

reached the middle of the hall, and he said that the newspaper had only showed one side of the case, and if we were willing to listen to him then, he was willing to give the other side of the case and would prove that the only tampering that had been done had been done by the Government, and affidavits to that effect were filed, and he charged the Government with keeping them from the public and asked us why we didn't go after them and give both sides of the case. To the best of my recollection he said he filed the affidavits. While I was there no reference was made to an attorney named Lodge. I don't think there was any reference to the time that such affidavits had been filed." (Rec. 674.)

"To the best of my recollection W. J. Burns said: 'I had filed.' There was some doubt in my mind as to what he said until I looked up our stories in the office and found they said that Mr. Burns said he had filed the affidavits. To the best of my recollection he used the word 'filed,' but he might have used something else. I went to the clerk's office and asked the clerk there if he knew of any such affidavits being filed, and he said 'no.' While I was there, Mr. Burns did not point to Mr. King and say, 'there is the only man that has been tampering with the jury and he ought to be put in jail.' I did not hear that part of the conversation." (Rec. 675.)

There is a mass of testimony relating to what was done by this appellant after he came to Washington to testify before the grand jury on November 6, 1927, a week after the mistrial, but since his conduct

then was and could not be the subject of any charge of contempt of court, it is unnecessary to refer to that part of the evidence. The introduction of this evidence, found for the most part in the testimony of McMullin, was strenuously objected to by the appellant, and over his objection received by the court. It should never have been introduced, and no doubt will not be considered by this court, except in passing upon the exception to its introduction duly noted by this appellant.

That is all of the testimony found in record which bears in any way upon the charge of contempt preferred against this appellant.

The following persons testified that this respondent was a man of the highest integrity and of excellent reputation: United States Senators Shortridge, of California (Rec. 739); Watson, of Indiana (Rec. 740); Copeland and Wagner, of New York (Rec. 741); Moses, of New Hampshire (Rec. 740); James M. Beck, Member of the House of Representatives, and former Solicitor General of the United States (Rec. 743), and Joseph P. Tumulty, former secretary to the late President Wilson (Rec. 742).

At the close of the Government's case a motion to discharge this appellant was seasonably made, but the trial court insisted upon the postponement of the consideration of the motion until the conclusion of the entire case (Rec. 698 and 699). At the end of the case the motion was renewed (Rec. 842). The trial court did not then pass on the motion, and did not dispose of it until requested so to do by this appellant's

counsel in the middle of the court's final decision, when he overruled the motion, and an exception was duly noted (Rec. 851).

The Court then proceeded to his findings of law and fact concerning charges against this appellant in the following language:

> "The Court: Now, on the question of the share taken by Mr. William J. Burns in this matter, it is one that has given me a great deal of—or, rather, I have given a great deal of consideration to it. I was very much inclined at first to the view that the evidence here would not justify holding Mr. William J. Burns in contempt of Court. I have followed very closely, or at least I have tried to do so, the very powerful argument made in his behalf by his counsel, Mr. Douglas, and also the argument of the prosecutors here on the subject. What we have really with regard to the evidence in this case is certain facts concerning Mr. W. J. Burns and the explanation of those facts by him, and such other evidence in his behalf as has been submitted here. It is that evidence, together with facts about which there is not any dispute in his behalf, and I will do no more than just briefly touch upon that evidence. I am not going to go over ground that has been traveled more than once by counsel on both sides here as to Mr. William J. Burns' connection with this Agency. As Mr. Douglas has very forcibly said, from the point of view of the contention he was making, of course Mr. William J. Burns was concerned about this matter. He was concerned about the Agency. As said by Mr. Douglas 'It was his child.' He was concerned about

the matter because his sons or at least one of them was involved in this charge.

"It is in evidence that he had for a very considerable time known the respondent Sinclair, that he had advised with him, and if I remember the testimony correctly, he had advised with him about matters coming within the purview of the Agency work at any rate, within a comparatively recent time. It is in evidence here that Mr. Sinclair was an old client of Mr. W. J. Burns. It is in evidence that, despite his restricted connection with the Agency, after he had retired finally from public office, that he did advise with his old clients.

"I am asked, in his behalf, to hold, to believe, that he knew absolutely nothing about the employment of this Agency in this surveillance until after the mistrial was declared. Here was his old client, an old client of his facing a criminal indictment against himself and another, in a case which had attracted countrywide attention. Here the respondent, Sinclair, comes to town in preparation, at least in part, for the trial which was to take place a week later, after his arrival. Here we have the employment by this Agency of 15 or 16 agents for the purpose of establishing this surveillance in that case after the jury is empaneled. Mr. William J. Burns, it is said, knows nothing whatsoever about it. Here he was in Washington, before the trial of the case commences, some twenty-four or thirty-six hours, and he knows nothing about the case and nothing about the surveillance and nothing about the matter of a surveillance that, in a week, less than a week from the time of Mr. Sinclair's arrival in town, was to

commence. I will not go over again the facts which have been discussed pro and con. It is perfectly true that Mr. Burns had denied that he was here. It is impossible for the Court to think that he was in entire ignorance of this matter. It taxes his credulity to do it.

"Mr. Burns' reputation has been testified to by those of high standing, by citizens of high standing, who had known him for periods ranging from 30 years, 25 years, 20 years to a shorter time. They all united in saying that his reputation, as they knew it, was that of a man of integrity and a good citizen. There is no evidence before the Court to the contrary, and, after all, I suppose it to be true that in a case like this there is a presumption of a person being a good citizen, even if he is charged with a criminal offense of some kind. Sometimes evidence of that character raises a doubt of the guilt of the person charged with a criminal offense. Taking the evidence in a case, and then taking reputation evidence, that reputation evidence has been known, in given cases, even to raise a reasonable doubt where none existed with reference to the other testimony against the defendant in the case. That Mr. William J. Burns should do what he could for the sake of his son, for the sake of the agency that he had founded—certainly that ought not to be held against him. The question is whether or not he took such a part in this matter, in the presentation of this affidavit to the Court, as subjects him to condemnation for his share in it. No answer has been given, no effective answer, it seems to me as to why that affidavit was delivered to the Court. There must have been

some motive, some purpose about it. It was not a futile, a useless act. I learn from the argument, or I am told in the argument of counsel in his behalf that he did not know anything about its delivery. Well, there is testimony to the effect that he stated very publicly to the newspaper men, gathered in this very building, that he filed such an affidavit. It has been stated, of course, that he did not know its falsity, that it was false, that clearly he did not know it was false. It is insisted by the Government that, under the circumstances and evidence in this case, that he did know it was false, knew it was false when it was placed in the hands of this Court. This is a charge of the most serious character, that this man who had enjoyed, apparently up to this time, a reputation for good citizenship, of being a man of integrity, that he should knowingly cause to be submitted to this Court that affidavit, seems almost past belief. That he knew of this surveillance under the testimony in this case, I cannot doubt. After all, the question maybe is whether or not mere knowledge of the surveillance by the agency is enough to require his being adjudged in contempt. There is no evidence that I recall, up to the time of the mistrial, that otherwise connects W. J. Burns with this matter. Of course I do not lose sight of the evidence that he is the founder of the Agency and has been the leading force in it until, he said, and others say in his behalf, that he drifted out of it when he entered the employment of the Government, and never resumed it except in a qualified capacity, but he did, in a qualified capacity enter its service as an advisor. I am told that he never vol-

unteered advice, that he only gave advice when it was solicited by his sons or by the Agency. I am not able to go that far, under this testimony, but I think the evidence shows—and it is not an unnatural situation; it is a most natural situation—the evidence points to Mr. W. J. Burns' interest in this Agency, whether it is the kind of legal interest we speak of—it was an interest, a vital interest, an interest which would more likely to a stronger interest than one that has for its basis some ownership of shares of stock. That he knew of this surveillance I cannot doubt, and that he knew it from the time it began. It is conceivable, I say again, from the time he knew, must have known, that when his client, the respondent Sinclair, was coming up for trial in this Court under a criminal indictment charging him, with another, with a very serious offense, that Mr. W. J. Burns knew about it. So while it cannot be said that his part in it is to the extent of his son Sherman Burns' part in it, much less that of the respondent Day or of the respondent Sinclair, I am obliged to find from this evidence that he was a party to that surveillance."

To the findings of law and facts this appellant duly noted an exception (Rec. 856).

The Court then imposed a sentence upon this appellant of imprisonment in the Washington Asylum and Jail for a period of fifteen days. (Rec. 859).

And thereafter an appeal in open court was noted from the judgment of the Court, and the bond on appeal duly fixed. (Rec. 860).

Points of Law Upon Which This Appellant Relies.

The respondent, William J. Burns, having appealed to the Court of Appeals of the District of Columbia from the final judgment entered in the above entitled cause, and the said cause having been certified to the Supreme Court of the United States, and the entire Record having been brought up, states that the points upon which he intends to rely in this court in this cause are as follows:

Point 1. The petition did not allege facts constituting contempt of court.

Point 2. There was no evidence adduced at the trial below upon which the findings of the court could be legally based.

Point 3. The trial court erred in admitting evidence of the operatives' reports.

Point 4. The trial court erred in not admitting testimony as to the intent of this appellant.

Point 5. The trial court erred in admitting evidence of things done after the mistrial of the Fall-Sinclair criminal case and when there was no cause on trial before the court.

Point 6. The trial court erred in not admitting evidence that there was no consciousness of the surveillance in the mind of any juror.

Point 7. The trial court erred in admitting evidence of acts of persons not shown to be connected with any of the appellants or with those acting in their behalf.

Point 8. The court erred in limiting the cross examination of Frank J. O'Reilly, a Government witness.

Point 9. There was no contempt of court committed by this appellant with respect to the preparation and filing of the McMullin affidavit.

Point 10. In view of the rulings and findings of the trial court, the court should have allowed the introduction of evidence concerning the practice and custom of the Department of Justice of the United States of shadowing juries in criminal cases.

Point 11. The trial court erred in admitting and considering testimony relating to the Kidwell-King-Akers incident, with which the appellants had nothing to do.

Point 12. The trial court erred in restricting the right of the appellants to discredit the Government's witness McMullin, both by limiting the cross examination of the witness and by rejecting testimony concerning his previous life and relating to his fraudulent acts.

Point 13. The findings of law and fact made by the trial court in the decision at the conclusion of the case are erroneous.

Point 14. There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the shadowing of the jury in the Fall-Sinclair criminal case.

Point 15. There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the procurement and submission of the false affidavit of William J. McMullin.

Point 16. There is no evidence in the entire record to support the judgment below.

Point 17. The trial court erred in admitting and refusing to strike out the evidence of William J. McMullin to the effect that Charles G. Ruddy had told him, McMullin, that the alleged false affidavit of McMullin had been made under the instruction of this appellant.

ARGUMENT.

The situation of this appellant is different from that of the others. The evidence conclusively demonstrates that, irrespective of whether or not the acts complained of in the petition constitute contempt of court, this appellant knew nothing of, and had nothing whatever to do with those acts. In making this statement, it is not to be considered for a moment that this appellant admits or concedes to the slightest extent whatever that the evidence adduced at the trial shows that any of the appellants were guilty of contempt of court, but, on the other hand, he emphatically states that the evidence is totally and fatally lacking of any such proof.

The points of law upon which this appellant relies are the same as those upon which the appellant, W. Sherman Burns relies, with this exception, namely,

that this appellant has stated four additional points not found in the points of law assigned by the appellant W. Sherman Burns. These additional points are as follows:

Point 14. *There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the shadowing of the jury in the Fall-Sinclair criminal case.*

Point 15. *There is no evidence in the entire record sufficient to prove that this appellant had any knowledge of or connection with the procurement and submission of the false affidavit of William J. McMullin.*

Point 16. *There is no evidence in the entire record to support the judgment below.*

Point 17. *The trial court erred in admitting and refusing to strike out the evidence of William J. McMullin to the effect that Charles G. Ruddy had told him, McMullin, that the alleged false affidavit of McMullin had been made under the instructions of this appellant.*

In so far as the main propositions of law involved in the consideration of this appeal are concerned, namely: those embraced in Points 1 to 13, inclusive, this appellant adopts, and, by reference, makes a part of this brief the Statement of the Case and the Argument in the brief of the appellant, W. Sherman Burns. The sole purpose of this brief is to discuss the propositions of law, stated in Points 14, 15, 16 and 17, to the effect that this appellant was in no way connected

with the shadowing of the jury in the criminal case against Albert B. Fall and Harry F. Sinclair; nor with the procurement and submission of the false affidavit of William J. McMullin.

Point XIV.

There is no Evidence in the Entire Record Sufficient to Prove that this Appellant had any Knowledge of or Connection with the Shadowing of the Jury in the Fall Sinclair Criminal Case.

The decision or finding of the trial court, which we have quoted in full in the Statement of the Case, is, in its essential parts, without any basis of fact. That is readily discerned from an analysis of the decision in the light of the Record.

As one reads the language of the trial Judge he is impressed with the fact that the question of the part played, or as the trial court expressed it "the share taken", by this appellant was a difficult one and hence of deep concern and doubt. Indeed, the trial Judge said that he "was very much inclined at first to the view that the evidence here would not justify holding Mr. William J. Burns in contempt of Court."

The trial court then indulged in a few general remarks about the argument of counsel and the evidence, and then observed that "of course Mr. William J. Burns was concerned about this matter. He was concerned about the Agency. As said by Mr. Douglas: 'It was his child.' He was concerned about the matter because his sons or at least one of his sons was

involved in this charge." All true, but what boots it. Certainly, this appellant, when he discovered that his son, Sherman, and the Agency, which he had founded and which still bore his name, were being accused of taking part in an attempt to corrupt a jury, was very much concerned, and naturally. But surely that does not in any way indicate guilt. It was an *ex post facto* interest and concern. All the evidence shows this.

We next come to the fact which seems to be the controlling one in the trial court's decision, namely, that Mr. Sinclair was an old client of W. J. Burns. Let us see what he says about it:

> "It is in evidence that he had for a very considerable time known the respondent Sinclair, that he had advised with him, and if I remember the testimony correctly, he had advised with him about matters coming within the purview of the Agency work at any rate, *within a comparatively recent time*. It is in evidence here that Mr. Sinclair was an old client of Mr. W. J. Burns. It is in evidence that, despite his restricted connection with the Agency, after he had retired finally from public office, that he did advise with his old clients."

The following is the testimony on which the foregoing statement was based. This appellant testified on cross-examination:

> "I have known Harry F. Sinclair a number of years and have done detective work for him for a number of years. The Agency was *not* employed by him in some capacity at the time the Fall-Sinclair case was being tried" (Rec. 752);

and on direct examination:

> "I was not consulted, and did no work in the Agency in 1927, that I remember" (Rec. 745).

W. Sherman Burns' testimony is:

> "I think my father is about 65 or 66 years old. After he had severed his connection with the Agency and after he had also severed his connection with the Government service and returned home, he occasionally would consult or advise with some of his old clients. I can't remember any specific case during that time where he actually employed the Agency to do the work required by one of the old clients, but if an old client had requested him he would have referred him to the Agency. For some period after he left the Government service he was ill and in Europe. I can't recall any specific instances right now of his employing the Agency for an old client during that period" (Rec. 786).

He had previously testified that he could remember only one investigation in which his father took part as advisor during the year 1927, and that was in the Spring of that year (Rec. 775).

It will be seen, therefore, that, while there was some justification for the finding that Mr. Sinclair had been a client of this appellant, there was no fact or facts to support the statement that Sinclair had advised with him "within a comparatively recent time," even if such a fact had been material. What difference did it make whether or not this appellant "within a comparatively recent time" advised with Mr. Sinclair, if it was

not shown that he advised with Mr. Sinclair or one of his associates about the particular matter of the surveillance of the jury?

The decision continues:

> "I am asked, in his behalf, to hold, to believe, that he knew absolutely nothing about the employment of this Agency in this surveillance until after the mistrial was declared. Here was his old client, an old client of his facing a criminal indictment against himself and another, in a case which had attracted countrywide attention. Here the respondent, Sinclair, comes to town in preparation, at least in part for the trial which was to take place a week later, after his arrival. Here we have the employment by this Agency of 15 or 16 agents for the purpose of establishing this surveillance in that case after the jury is empaneled. Mr. William J. Burns, it is said, knows nothing whatsoever about it. Here he was in Washington, before the trial of the case commences, some twenty-four or thirty-six hours, but he knows nothing about the case and nothing about the surveillance and nothing about the matter of a surveillance that in a week, less than a week from the time of Mr. Sinclair's arrival in town, was to commence. I will not go over again the facts which have been discussed pro and con. It is perfectly true that Mr. Burns had denied that he was here. It is impossible for the Court to think that he was in entire ignorance of this matter. It taxes his credulity to do it."

Mere guessing and speculation, without a scintilla of evidence to support it? Every word of testimony on the subject negatives any such suspicion. From the mouths

of the Government's own witnesses came the testimony that the employment was not made until October the 18th, 1927. This appellant was not in Washington "some twenty-four or thirty-six hours" before the Fall-Sinclair case commenced. He was here on October 13th, five days before the case began, when no one knew or could have supposed that the trial Judge would not lock up the jury in a case where its importance and the wealth and position of the defendant should have prompted him so to do, so as to allay any criticism or suspicion. But the most objectionable part of the decision just quoted is the suggestion that this appellant testified falsely concerning his presence here in Washington some days before the beginning of the trial of the criminal case. The trial court first makes the statement: "Here he (this appellant) was in Washington before the trial of the case commences, * * *", and then he says: "It is perfectly true Mr. Burns had denied that he was here." It is not true that Mr. Burns denied that he was in Washington before the criminal case began. There is no justification in the evidence for any such accusation, and in the light of the Record it is well nigh inconceivable that the trial court could have fallen into such error.

In the first place, as has been shown in the Statement of the case, this appellant's attorney freely admitted on the record that this appellant was in Washington on October 12 and 13, 1927. This appellant testified that he came to Washington on the night of October 12th to keep an appointment, theretofore made for the 13th with Mr. Dadswell of Sarasota, Florida, for a confer-

ence that day with Admiral Bullard of the Radio Commission, and of course no attempt whatever was made to conceal the fact of this appellant's presence in Washington. Mr. Dadswell took the stand, and testified that he met this appellant here in Washington on October 13th by appointment. And Miss Lois Stuntz, secretary to the late Admiral Bullard, of the Radio Commission, testified that said appellant was in Admiral Bullard's office on October 13th. Witnesses Dadswell and Stuntz were examined for appellant, not to prove that he was not in Washington, but to prove why he was here.

The court's charge that this appellant denied under oath that he was in Washington before the criminal trial commenced is particularly inexplicable in view of the fact that this appellant, in his sworn answer to the petition herein, stated that he was in Washington on October 12 and 13, 1927, as follows:

> "This respondent says that he was in the city of Washington on the 12th and 13th days of October, 1927, but that the reason for said visit and the business transacted by him were not in the remotest degree connected with the trial of the aforesaid cause of United States v. Sinclair *et al.* and he proposes to show on hearing hereof and upon information and belief he alleges that at the time of his said visit the said Burns Agency had not been employed to make a jury surveillance nor had the matter been considered, discussed or mentioned to any officer or employee of the said Burns Agency, nor, (and this he avers of his own knowledge) to this respondent." (Rec. 20).

The trial court then comments upon the testimony concerning the integrity and good character of the appellant, and observed, in passing, that such testimony raised a presumption of innocence. It ended with the observation.

Speaking further of this appellant the trial court said:

> "That he knew of this surveillance under the testimony in this case I cannot doubt."

Search the Record, from beginning to end, but there will be found no fact upon which such a finding can be based. There is no such evidence. All the testimony on this subject, whether introduced by the Government or by the appellants, is quite to the contrary.

The trial judge is frank to admit that:

> "After all, the question *maybe* is whether or not *mere knowledge* of the surveillance by the agency is enough to require his being adjudged in contempt. There is no evidence that I recall, up to the time of the mistrial that *otherwise* connects W. J. Burns with this matter."

In other words, the trial court in effect said that knowledge, or "mere knowledge," as he puts it, of the existence of the shadowing was the only connection this appellant had with the surveillance of the jury in the criminal case!

As we have heretofore shown, there was *no* evidence of any knowledge of the surveillance on the part of this appellant. Assuming, however, for argument's sake, that the appellant did know of the surveillance,

how could that fact support an adjudication of contempt? We have searched the decisions and are unable to find a single case to support the proposition that *knowledge* of the act or fact that constitutes contempt of court would render the person having such knowledge also guilty of such contempt.

The trial court then proceeded to discuss what effect mere knowledge of the surveillance had on the question of contempt of court.

> "Of course I do not lose sight of the evidence that he is the founder of the Agency and has been the leading force in it until, he said, and others say in his behalf, that he drifted out of it when he entered the employment of the Government, and never resumed it except in a qualified capacity, but he did, in a qualified capacity enter its service as an advisor. I am told that he never volunteered advice, that he only gave advice when it was solicited by his sons or by the Agency. I am not able to go that far, under this testimony, but I think the evidence shows—and it is not an unnatural situation; it is a most natural situation—the evidence points to Mr. W. J. Burns' interest in this Agency, whether it is the kind of legal interest we speak of—it was an interest, a vital interest, an interest which would more likely be a stronger interest than one that has for its basis some ownership of shares of stock. That he knew of this surveillance I cannot doubt, and that he knew it from the time it began. It is conceivable, I say again, from the time he knew, must have known, that when his client, the respondent Sinclair, was coming up for trial in this Court under a

> criminal indictment charging him, with another, with a very serious offense, that Mr. W. J. Burns knew about it. So while it cannot be said that his part in it is to the extent of his son Sherman Burns' part in it, much less than that of the respondent Day or of the respondent Sinclair, I am obliged to find from this evidence that he was a party to that surveillance."

We have no quarrel with the trial court's general comment of the relation between William J. Burns and the Burns Agency, but we do take issue with him when he says:

> "I am told that he never volunteered advice, that he only gave advice when it was solicited by his sons or by the Agency. I am not able to go that far under this testimony."

Who so informed the court? The Government's own witness, Raymond J. Burns, who testified:

> "Since I have been president, and since W. J. Burns' salary as adviser of the Agency commenced, he has not done anything whatever in connection with the Agency, even in the shape of advice, unless his advice was sought either by me or my brother, W. Sherman Burns. His advice was not sought in connection with this particular employment, the shadowing the jury in the Fall Sinclair case." (Rec. 672).

The only two other persons who could testify to this, namely, W. Sherman Burns and this appellant, testified to exactly the same fact. There is no evidence to the contrary. Why then did the trial court have such

difficulty in going, as he says "that far?" The evidence went that far.

We find this statement: "That he *knew* of this surveillance I cannot doubt, and that he knew of it from the time it began." Again we say even if knowledge were sufficient, there is no evidence of that. "It is conceivable * * *," said the trial court, speaking of the criminal case, "that Mr. W. J. Burns knew about it." It is difficult to tell whether the trial court referred to the criminal case or to the surveillance, but assuming he meant the latter, we agree with him that it was *conceivable* that he knew of it, but when a person is charged with an offense in the nature of a crime, he cannot be convicted on what the imagination might conceive. If we understand the law, the trier of the facts must be convinced beyond a reasonable doubt that the accused is guilty.

Then the trial court holds that by reason of his knowledge of the surveillance, this appellant was a party thereto, "but not to the extent of his son, Sherman Burns." When it is realized that the only connection of Sherman Burns was his acceptance of the employment on behalf of his corporate principal, the Burns Agency, it is difficult to understand what the trial court meant, unless it was, as he had repeatedly said before, that this appellant, by reason of "mere knowledge" was a party thereto. His connection could not be anything else, and be less than the part that his son, Sherman, had in the shadowing; all of which goes to show that this appellant could not have talked with Mr. Sinclair in Washington about the shadowing, as the court suggested, because if he had, then his part

therein would have been to a greater extent than that of his son Sherman.

Point XV.

There is no Evidence in the Entire Record Sufficient to Prove that this Appellant had any Knowledge of or Connection with the Procuring and Submission of the False Affidavit of William J. McMullin.

It is not the purpose of this portion of our argument to discuss the proposition that, even if the affidavit had been filed by this appellant with knowledge of its falsity, he could not legally be adjudged in contempt of court because there was nothing before the court, but this appellant, by reference, adopts the argument of that proposition made in the brief of the appellant W. Sherman Burns.

We propose here to show that this appellant had nothing to do with procurement and submission of the McMullin affidavit, and hence, the charge in that respect must fail for want of proof.

We return to that part of the trial court's decision which relates to the submission of the false affidavit. It will be noted that the trial court does not find that he had any share in procurement. This is what the trial court decided:

> "The question is whether or not he took such a part in this matter, in the presentation of this affidavit to the Court, as subjects him to condemnation for his share in it. No answer has been given, no effective answer, it seems to me as to why that affidavit was delivered to the

> Court. There must have been some motive, some purpose about it. It was not a futile, a useless act. I learnt from the argument or I am told in the argument of counsel in his behalf that he did not know anything about its delivery. Well, there is testimony to the effect that he stated very publicly to the newspaper men, gathered in this very building, that he filed such an affidavit. It has been stated, of course, that he did not know its falsity, that it was false, that clearly he did not know it was false. It is insisted by the Government that, under the circumstances and evidence in this case, that he did know it was false, knew it was false when it was placed in the hands of this Court. That is a charge of the most serious character, that this man who had enjoyed, apparently up to this time, a reputation for good citizenship, of being a man of integrity, that he should knowingly cause to be submitted to this Court that affidavit, seems almost past belief."

What seems to impress the trial court was the fact, as he said, that no answer had been given "why that affidavit was delivered to the court." The trial court evidently overlooked the testimony of Mr. Lodge to the effect that he, a member of the Bar, brought the matter to the trial court's attention for the trial court's information—to make such use of it as he saw fit.

There is no definite fining that this appellant took part in the filing, or submission of the affidavit, although the trial court does refer to testimony which he considers apparently persuasive of the fact that this appellant submitted the affidavit. The trial court refers to the testimony of the two newspaper men, who both

were very careful to say that the appellant had said that he had "*filed*" the affidavit. This testimony is valueless, because Justice Siddons, himself, filed the affidavit, and was very emphatic in stating in open court that he had done so (Rec. 1, Addition). But assuming that the trial court did find that this appellant had submitted or caused to be submitted the McMullin affidavit, then we say that the finding is without any evidence to support it. Every person connected with making of the affidavit, except McMullin, exonerates this appellant of any connection with the making or filing of the affidavit. McMullin was permitted, over the objection of this appellant, to testify that Ruddy told him, McMullin, that William J. Burns told Ruddy to procure the making of the false affidavit. That evidence was pure hearsay, and its admission is the subject of discussion in a subsequent portion of this brief, and further comment upon it will be reserved until this later discussion.

The trial court then takes up the matter of the appellant's knowledge of the falsity, but it is quite difficult to determine just what the trial court was attempting to decide. It is unfortunate that the trial court is so vague. After stating the contention of both sides as to this appellant's knowledge, or lack of knowledge of the falsity of the appellant, the trial court leaves off further discussion with the observation: "that he should knowingly cause to be submitted to this court that affidavit, seems almost past belief."

We submit that, if the trial court made any finding, it was that this appellant did not know of the falsity of

the affidavit. At any rate, the trial court certainly *did not* find that this appellant knew of the falsity of the affidavit. If he had made such a finding it would have been wholly unsupported by any fact whatsoever, for the reason that all the evidence conclusively shows that this appellant knew nothing about the procurement and submission of the affidavit, and did not hear of it until November 5, 1927, two days after it was made, and the day after it was handed to Justice Siddons.

Point XVI.

There is no Evidence in the Entire Record to Support the Judgment Below.

What has been said about the trial court's findings as expressed in the decision is equally true with respect of the ultimate judgment; that is to say, there is no evidence in the Record to support the judgment.

We are not unmindful that the Court of Appeals of the District of Columbia has repeatedly held that a finding of fact by a trial judge is entitled to the same consideration as a verdict of a jury, if there is any evidence to support it or if it is not clearly and manifestly wrong, or if it is not against the overwhelming weight of the evidence.

McLarren vs. McLarren, 45 App. D. C., 237.
Ellison vs. Splain, 49 App. D. C., 99.

However, as was said by Mr. Justice Van Orsdel, in *May Jik vs. United States*, 47 App. D. C., 498, 504:

> "The right to look into the evidence to test its sufficiency to support a judgment is always within the discretion of an appellate court."

Indeed, it has been held by the Court of Appeals of the District of Columbia, that even where a trial judge's findings is supported by evidence, nevertheless, if the fact found is so improbable or so contrary to the weight of the evidence, such finding will not be followed by the Court of Appeals. *Eichelberger vs. Symons*, 51 App. D. C., 69. In that case the lower court found that Mrs. Symons was *innocent of adultery*, but the Court of Appeals reversed the lower court and held that the evidence showed conclusively that the defendant and the corespondent were *guilty* of adultery. The same rule should, for greater reason, be applied here, where the court below has found a citizen guilty of a charge without any evidence whatever to support the finding and especially in a case where, before he can be adjudged in contempt, he must be found guilty beyond any reasonable doubt.

Grompers vs. Buck's Stove and Range Co., 221 U. S., 418.

Lombardo vs. United States, 56 W. L. R., 833 (Decided November 5, 1928).

Point XVII.

The Trial Court Erred in Admitting and Refusing to Strike out the Evidence of William J. McMullin to the Effect that Charles G. Ruddy had told him, McMullin, that the Alleged False Affidavit of McMullin had been made under the Instructions of this Appellant.

Every witness in the trial below, except McMullin, testified that William J. Burns had nothing to do with, and had no knowledge of the alleged false affidavit executed by McMullin. Over the objection of this appellant, the trial court permitted McMullin, when on the witness stand, to state that Ruddy, the manager of the Burns Agency, told him, McMullin, that William J. Burns told him, Ruddy, to have the affidavit prepared and executed. Exceptions to the admission of the testimony were duly noted (Rec. 623).

Both Ruddy and this appellant positively denied the truth of McMullin's statement, so that the foregoing hearsay testimony is the only basis in the entire record for the court's ruling that this appellant was in any manner whatsoever connected with the surveillance. If that testimony was improperly admitted and considered, as we respectfully submit it was, the whole case against this appellant must fall. The trial court must have considered the hearsay testimony of McMullin, or else he would not have admitted it over the objection of this appellant, and he would have granted the motion made by this appellant at the close of the Government's case to strike out the testimony (Rec.

697) and, certainly, would have granted the motion when renewed at the close of the entire case (Rec. 841). Were it not for these facts, we would not waste space and the time of this court in a discussion of the rule of pure hearsay evidence. That such evidence is inadmissible has been repeatedly held by this court.

Conrad *vs.* Atlantic Inc. Co., 1 Pet., 386.
Murphy *vs.* Killinger, 8 Wall., 480.
Young *vs.* Godbe, 15 Wall., 562.
Hopt *vs.* Utah, 110 U. S., 574.
Cook *vs.* United States, 138 U. S., 157, 158.
Cadwalader *vs.* Zeh, 151 U. S., 171.

Nor could the evidence possibly be admitted on any theory of agency. It is axiomatic that the fact of agency cannot be proved by the declaration of the alleged agent.

Conclusion.

The Government's brief will follow the filing of this. Surely, if we have not correctly recited the evidence, or have left out of our Statment of the Case any testimony bearing upon the guilt or innocence of this appellant; or if we are in error when we emphatically state that there is no evidence to support the adjudication herein, counsel for the Government will supply the missing testimony, or will point out why the evidence justifies the ruling. We await with interest to see just what will be said by our opponents. As far as has been in our power we have searched the Record to find any piece of evidence, small as it might be,

upon which the court below could possibly base the adjudication. We have found none. There is none.

It is submitted that if this appellant had been summoned and directed under the solemn and compelling force of law to prove his innocence beyond a reasonable doubt, he would have discharged that obligation.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 748

HARRY F. SINCLAIR, HENRY MASON DAY, WILLIAM J. BURNS, AND W. SHERMAN BURNS, APPELLANTS,

vs.

UNITED STATES, APPELLEE.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF OF THE APPELLANT W. SHERMAN BURNS UPON THE ENTIRE RECORD.

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SUPREME COURT OF THE UNITED STATES.

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BRIEF OF THE APPELLANT W. SHERMAN BURNS UPON THE ENTIRE RECORD.

Statement of the Case.

I.

NATURE OF THE PROCEEDINGS.

This case is before the Supreme Court of the United States upon certification to it by the Court of Appeals

of the District of Columbia of certain questions of law. After motion was made by the Government counsel, which was joined in by counsel for the appellants, this court made and entered the following order:

> "*In Consideration* of the motion to bring up the entire record and cause herein and advance the case for argument on Monday, April 22, next,
>
> "*It is now here ordered* that the said motion be, and the same is hereby granted."

This appellant was one of the respondents below in a criminal contempt proceeding. He appeals from the findings of law and fact of the trial justice adjudging him guilty of contempt of court and from an imposition of a fine of $1,000 (Rec. 858).

The appellant is the Secretary and Treasurer of the William J. Burns International Detective Agency, Inc. (hereinafter for convenience called the "Burns Agency"), and in such capacity, at the instance of the appellants Harry F. Sinclair and Henry Mason Day, undertook the work of observing, or as it is commonly called shadowing, the jurors in the case of United States *vs.* Harry F. Sinclair and Albert B. Fall, criminal No. 43,324, then being tried in the Supreme Court of the District of Columbia before Hon. Frederick L. Siddons, Associate Justice. A mistrial was declared in the criminal case against Sinclair and Fall, and it was claimed that the activities of the operatives or investigators of the Burns Agency, among other things, was the cause of such mistrial (Rec. 2-3). Shortly thereafter this appellant, with five other respondents,

was served with a petition alleging that he, with the other respondents, was guilty of criminal contempt of court (Rec. 2); and he was directed to appear on December 5, 1927, before Justice Siddons and show cause why he should not be adjudged in contempt of the authority of the court (Rec. 8).

In substance, the petition alleged that at the October, 1927, term of the Supreme Court of the District of Columbia, in the criminal division thereof, there came up for trial the case of United States *vs.* Sinclair and Fall, wherein those defendants were charged with conspiracy to defraud the United States; that the trial was begun before Justice Siddons on October 17, 1927, and that on the next day twelve petit jurors were empanelled; that the jury was respited from day to day until November 2, 1927, when the jury was finally discharged and a mistrial declared, because sworn charges had been made against Edward J. Kidwell, Jr., one of the jurors, to the effect that during the trial and outside the court room he had made remarks in the presence and hearing of J. Ray Akers and Donald K. King concerning his attitude and intended action as a juror with respect to the trial of the criminal case; and because of sworn charges that there were a large number of operatives or investigators of the Burns Agency in Washington since October 18, 1927, in a "close, intimate, objectionable and improper surveillance and investigation of the jurors aforesaid and their relatives, neighbors and friends of said jurors." It was further alleged that the appellant Harry F. Sinclair directed the appellant Henry Mason Day and one Sheldon Clark, his associates, to come to Wash-

ington and engage the services of the Burns Agency, and to supervise the activities of and receive the reports from the operatives of that agency for the following objects:

> "To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause and to influence, pervert, impede and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert and prevent the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose."

(Rec. 3, 4). The petition stated also that the employment of the Burns Agency was accomplished by a telephonic communication with this appellant on October 18, 1927, and on that day and the following day fifteen operatives of the Burns Agency were assembled in Washington and were assigned by the appellant Day and Clark to the duties of spying upon, investigating and shadowing the jurors, and that such duties were

performed by the operatives up to and including November 2, 1927; that in the early morning of October 19, 1927, Charles G. Ruddy, then in charge of the operatives of the Burns Agency, went to Baltimore and conferred with Charles S. Veitsch (one of the respondents below who was discharged at the termination of the trial), the manager of the Baltimore office of the Burns Agency, in connection with the conduct of the investigation; that thereafter on three separate occasions Veitsch came to Washington and brought large sums of money, totalling $1,500, which he delivered to Ruddy to finance the preliminary steps of the investigation; that William J. Burns, while not an officer of the Burns Agency, was actively engaged in conducting its affairs, and, through the holding by his wife of 47 out of the total 50 shares of its capital stock, indirectly received moneys and benefits, and that he came to Washington on October 12 and 13, 1927, in connection with the investigation, and on the 3rd of November returned to Washington, where he and this appellant "in furtherance of said designs of said respondents, procured the making of a false affidavit purporting to show that a representative of the United States Department of Justice approached and held conversation with said Norman L. Glasscock, a juror in said cause, as aforesaid, and that the said William J. Burns and the said W. Sherman Burns, knowing said affidavit to be false and without truth and fact, did then and there procure the submission of said affidavit to said Hon. Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia, intend-

ing thereby to provide evidence, such as it was, that the United States of America, through one of its employees, had tampered with said juror in the case of United States *vs.* Harry F. Sinclair and Albert B. Fall, Criminal No. 4324."

The petition still further alleged that Ruddy, in charge of the investigation, directed an investigation of the encumbrances upon the home of John P. Kern, one of the jurors, and an investigation of his neighbors, and of the brother of Edward J. Kidwell, Jr., a juror; and that the operatives, at the direction of Ruddy, falsely reported that juror Glasscock was seen in conference with an employee of the Department of Justice at a remote place outside of Washington; and that all of the operatives reported daily in writing to Ruddy, the original of which reports were sent to this appellant in New York; and that "at all times hereinbefore mentioned, each of the persons above named as respondents to this petition well knew all of the premises aforesaid, and well knew that the said criminal prosecution was being conducted in said court as aforesaid; that said prosecution was not finished, that said jurors were sworn jurors trying the issues in said cause in said court as aforesaid; that they, the said respondents, were not, as in fact they were not, called upon or authorized by said court, or by anybody in authority, to spy upon said jurors or any of them, or to approach, molest, intimidate, or influence said jurors or any of them, or to do anything calculated to interfere with or impede said jurors or any of them in the unbiased discharge of their said duties, or to in-

fluence, pervert, prevent, or in any manner, or to any extent, impede the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the respondents therein or to disagree as to said issues by unlawfully spying upon said jurors or any of them for the purpose of concocting false charges against one or more of said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid" (Rec. 2-7).

This appellant filed his answer and denied the material allegations of the petition, except the fact of employment, and denied any design on his part, or any knowledge of any design on the part of any other person, to establish contact with any juror for the purposes alleged in the petition; and denied that he and William J. Burns, or he alone, or with any other person procured the making of a false affidavit; and he further stated that he believed no contact, direct or indirect, was established between any operative and any juror, and that the administration of justice was in no way impeded; and further that he knew nothing of the investigation concerning the encumbrances on the home of juror Kern. Moreover, his answer stated that the right to investigate or shadow a jury empanelled in a cause was a right within the letter and the spirit of the law, and further that the facts alleged in the petition were insufficient in law to constitute a criminal contempt (Rec. 22).

The answer was accompanied by a motion to discharge the rule and dismiss the petition on the ground that the petition was duplicitous and multifarious; and that the facts alleged in said petition, even if fully established, did not constitute a contempt of court, criminal or otherwise, and that the court was without jurisdiction in the premises. This motion was overruled and an exception duly noted (Rec. 76). At the close of the Government's testimony the motion was renewed on the same grounds, and for the further reason, that none of the allegations of the petition respecting the purposes and designs of this appellant were in any wise supported by the evidence, and further that there was not a scintilla of evidence that any person, connected in any wise with the respondents, ever approached, came in contact with or conversed with a juror, or ever attempted so to do, or that any juror was ever conscious of being investigated or shadowed; and that no act of the respondents obstructed or directly tended to obstruct the administration of justice. In addition to the foregoing grounds, the motion of this appellant to dismiss the petition at the close of the Government's case was based upon the fact that the petition charged the respondents with a *conspiracy* to commit a criminal contempt; and that shadowing or investigating a jury was not in itself a violation of law and not contempt of court; and that the submission of the McMullin affidavit could not constitute contempt of court, since there was no trial then pending and nothing was asked to be done with the affidavit; and on the further ground that the prosecution was

based upon Section 135 of the penal code. The motion was overruled and an exception duly noted (Rec. 698).

At the close of the respondents case and after argument by respective counsel, the court rendered its opinion and adjudged this appellant guilty of criminal contempt of court, and imposed upon him a fine of $1,000 (Rec. 858).

The facts disclosed by the admitted pleadings and by the evidence are substantially the following:

II.

Concerning the Employment of the Burns Agency.

On October 18, 1927, there was empanelled in the Supreme Court of the District of Columbia, criminal division No. 2, before Justice Siddons, a jury to try the issues in the case of United States *vs.* Sinclair and Fall, a criminal proceeding (Rec. 2). The jurors were not kept locked up, but were allowed to go to their homes at the end of each trial day. On the afternoon of the first day of the trial the appellant Sinclair stated to the appellant Day that he was disappointed that the jury had not been locked up, and was fearful that someone of his enemies or competitors, or those who had written him so many malicious letters, might in some way influence, or attempt to influence the jury. He told Day that he wanted from 12 to 14 investigators or operatives, with someone in charge, sent to Washington by the Burns Agency to investigate or shadow the jury. His idea was that they would merely keep the jury under surveillance and not approach them

or speak to them or in any way come in contact with them—simply to observe and to report any suspicious acts of the jurors or those coming in contact with them, and to inform Mr. Sinclair of such persons who might come in contact with any of the jurors (Rec. 823). Day communicated with one Jeffries, the personal secretary of Mr. Sinclair in New York, and instructed Jeffries to have someone in the Burns Agency call him, Day, on the telephone (Rec. 824). Mr. Jeffries communicated with this appellant at the Burns Agency, and requested him to call Day on the telephone in Washington (Rec. 398). As requested, this appellant then telephoned Day, who told the appellant that the jury in the criminal case had not been locked up and that he would like to have the jury covered or shadowed as they wanted to have a "square deal." Day said he wanted twelve men to cover the jury and made an appointment to meet the man who would be in charge of the operatives at nine o'clock that evening in Washington (Rec. 796). This appellant selected Ruddy, then manager of the Philadelphia office of the Burns Agency, to take charge of the surveillance, because he had confidence in Ruddy's ability and judgment. He called Ruddy on the telephone and asked him if he could take charge of the work, at the same time telling him that it was a pure surveillance case; and telling him where he could meet Day that evening (Rec. 776, 777). This appellant moreover told him that he could take instructions from Day, but that after he had talked with Day he should call this appellant on the telephone, so that this appellant could

be certain that he was correct in his assumption of what was the character and the limitations of the work (Rec. 777). It was this appellant's purpose to consider what instructions Ruddy should receive from Day and determine for himself whether or not it was within the scope of what this appellant was willing to do (Rec. 777). Ruddy arrived in Washington that same evening about half past ten and met Day at 2118 Leroy Place. After identifying himself by using the prearranged name of Jeffries so that Day would know who he was (Rec. 825), Day gave Ruddy Exhibit No. 1, a descriptive list of the jurors (Rec. 78, 79). Upon inquiry Ruddy told Day that there would be at least eight operatives in the field by eight o'clock next morning. Day then told Ruddy that he wanted him to place each of the jurors under surveillance and that the jurors were to be investigated as closely as possible outside of the court, but that under no circumstances were any of the operatives to approach any juror; and further that he particularly desired to be informed whether any of the jurors should be approached by anyone else; and to be careful to obtain the numbers of any of the automobiles other than those of the jurors in which the jurors might ride; and he emphasized the necessity of care so that the jurors would not be approached at any time or in any way (Rec. 83, 825, 826). Day repeated the instructions that had been given him with reference to this (Rec. 776, 777). Day also said that he wanted daily reports of the investigation (Rec. 85, 826).

About midnight Ruddy went to Baltimore and con-

ferred with Veitsch, manager of the Baltimore office of the Burns Agency. He then called this appellant on the telephone and repeated to him the conversation that he had with Day and told him what Day wanted done. This appellant then told Ruddy to be certain to see that the men were very careful and to see that the men were instructed not to embarrass the jurors in any way, or to permit the jurors to know that they were being shadowed; and if any man disobeyed such instructions he was to be immediately sent back to his respective office. This appellant had already instructed the men who had left the New York office to take part in the work of investigation along these same lines (Rec. 84).

III.

The Activities of Operatives.

The actual work of shadowing the jury began on Wednesday, October 19, 1927. Eight operatives who had arrived that morning from New York, Philadelphia and Baltimore were given their instructions by Ruddy and assigned to cover various jurors. Three more operatives arrived later in the day, but too late to be put to work. The credentials and identification cards of all of the operatives were taken from them, as is the established custom of the detective business. Ruddy testified regarding this:

> "At the very beginning of the operation the identification cards of the men were taken from them. It is very, very often done in surveillance work, and more for this reason, so when

> they are off the job around the hotels they won't be identified by anything on them, or that they might leave in their room. We certainly cannot put a uniform on our men and do shadow work, and we took the precautionary measure to take up surveillance cards, and we do it constantly" (Rec. 384).

And each operative was known by a symbol instead of his name, and used his symbol in signing his reports, as is also the established custom of detective agencies (Rec. 480).

Of the eight operatives who began in the morning, only three were successful in locating those jurors whom they were instructed to cover, called in the profession "their subjects." Jurors Heaton, Bailey and Holmes were the only ones shadowed.

On October 20th ten jurors were shadowed; juror Costinett was missed by the operatives assigned to him; and juror Flora was not shadowed at all. Juror Kidwell was followed to the Museum grounds by operative Stewart. It was the intention to put every juror under surveillance, but to do so required more men than were available (Rec. 386).

On October 21st ten jurors again were shadowed. Only one was missed and one not covered at all. Moreover, four of the operatives were shifted from one juror to another as a precautionary measure to avoid any suspicion on the part of the jurors that they were being followed. One more operative arrived that day. In the evening all of the operatives met at the Mayflower Hotel in operative O'Reilly's room where their original instructions were reiterated, namely,

that they should be very, very careful so as not to permit the jurors to know that they were being shadowed (Rec. 379). These instructions had been theretofore given to every man by Ruddy on the morning of October 19th before they had begun their work of investigation, and as others arrived to take up the work the same instructions were given them; and the operatives were repeatedly told to be careful to observe them. Ruddy moreover told the operatives that they would be sent back to their respective offices and recommended for dismissal if they violated the instructions (Rec. 379). The purpose of this meeting was to emphasize the previous instructions, and to change men from one juror to another. That was arranged at the meeting (Rec. 381). Nothing, however, was said or done by anyone of the operatives that impelled or suggested Ruddy to reiterate the instructions. He merely did it as a precautionary step (Rec. 384). It was on this day that Ruddy was directed by Day to place juror Kern's brother under surveillance (Rec. 375).

On October 22nd seven jurors only were shadowed. One operative left, one was assigned to shadow and investigate Charles E. Burr, who had been reported by operative McMullin as having been with one of the jurors. The operative, however, did not succeed in locating Burr on that day. Three operatives worked together in shadowing juror Kern with a hope of being able to locate and shadow Kern's brother-in-law. They were, however, unsuccessful in that. Late that evening four of the operatives paid a social visit to

operative O'Reilly at his rooms in the Mayflower Hotel.

On October 23rd six jurors, Grenfell, Kidwell, Kern, Goucher, Holt and Herzog were shadowed. Two operatives shadowed Goucher because he lived in the suburbs where it was difficult to observe him without being seen. Operative Steer was, at the direction of Ruddy, assigned by O'Reilly, who was in a way the lieutenant of Ruddy, to investigate a man named Vogts. Steer received only general information from the neighbors of Vogts. Two operatives worked together in shadowing juror Kern. Operative Sullivan continued to investigate Burr, but he failed to find out anything about him.

On the next day, October 24th, the same six jurors were again shadowed by the same operatives, except that only one operative kept juror Goucher under surveillance. Operative Sullivan again failed to find out anything about Burr. Operative Steer was assigned to investigate one Horace R. Lamb, who had been reported by operative McMullin as having been conversant in an out of the way place with juror Herzog. While operative Steer did look up Lamb in the city directory, he did not succeed in seeing him. Operative Brennan was assigned by O'Reilly to investigate one Josephine E. Hopkins, which was done. Operative Klein kept juror Kidwell under surveillance to the Museum grounds, where the juror ate his lunch crouched against a tree. No one, certainly not Klein, the operative, approached juror Kidwell while he was there.

It was on the same day, October 24th, that O'Reilly at the direction of Ruddy, went to Anacostia to get a

description of a barber named Kidwell, so as to be able to identify him, if necessary, at a later date. Ruddy had told O'Reilly that the barber was a brother of juror Kidwell, but did not tell him where the barber lived. He did, however, tell him to begin his investigation in Anacostia (Rec. 415). *O'Reilly was not asked or directed by Ruddy to locate, see or get in contact with juror Kidwell, nor did he attempt to do so or try to find out anything whatsoever about juror Kidwell when he went to Anacostia.* O'Reilly had never been there before (Rec. 428). He asked five or six people on the street where a barber, named Kidwell, lived; and he was directed by someone to U Street. He found the street number from a list of "Kidwells" he had taken from the city directory. He did not know the full name nor the initials of juror Kidwell (Rec. 429). He did not go into the house, but rang the door bell and an elderly lady came to the door (Rec. 429). He asked if Mr. Kidwell was in and she in turn asked which Mr. Kidwell. He replied, "Mr. Kidwell, the barber," and he was then told that the man he wished to see was at his barber shop in the Myrtle Apartments in Congress Heights (Rec. 506). O'Reilly did not say who he was except that he was from the Health Department with some papers (to allay suspicion). O'Reilly then left (Rec. 507), and went to the Myrtle Apartments and found Kidwell, the barber, in his shop. He did not go into the barber shop (Rec. 430). He asked Mr. Kidwell if a Mr. Stewart ran a barber shop in Congress Heights (a name taken at random), and was told that a Mrs. Stewart had formerly run a beauty parlor there but

had moved away. O'Reilly thanked him. That was all that was said (Rec. 509). O'Reilly then returned to Wardman Park Hotel (the headquarters of the Burns Agency in this particular work), and reported to Ruddy what had occurred. Day was there at the time (Rec. 416). *When O'Reilly went to the house in Anacostia he did not know where juror Kidwell lived, and he made no inquiries there about him* (Rec. 430). O'Reilly never shadowed any of the members of the Kidwell family (Rec. 432).

On October 25th seven operatives left Washington and returned to their respective offices. Operative Merritt shadowed juror Kidwell; operative Steer shadowed Burr; operative Sullivan tried, but failed to obtain any information concerning Burr; and O'Reilly tried to get a description of Lamb, but failed.

On October 26th O'Reilly, from a description of Lamb made by Ruddy from operative McMullin's report, was able to locate Lamb and shadow him. Ruddy joined him in this work for several hours during the day, and operative Merritt joined him in the evening. Merritt shadowed juror Kidwell until 6:30 and joined O'Reilly at eight. Operative Steer shadowed Burr, and operative Sullivan returned to his home office.

On October 27th Merritt shadowed juror Kidwell; Steer shadowed Burr, while O'Reilly failed to locate Lamb.

On October 28th Merritt, in conjunction with operative McMullin, shadowed Glasscock; Steer shadowed Burr; and O'Reilly made a credit investigation of juror Kern to determine his financial responsibility,

but he learned nothing (Rec. 421). Ruddy had been asked by Day for the best way to find out how responsible juror Kern was, as he believed him irresponsible. Ruddy replied that a general credit check on the man was the best way and then directed O'Reilly to make a credit report (Rec. 87). This report was never reduced to a typewritten report to be handed to Day and was never reported to him personally; nor was this report ever sent to this appellant in New York, as Ruddy had doubts as to whether or not the investigation was in violation of the instructions given to him by this appellant, and beyond the scope of the work (Rec. 206).

On October 29th jurors Glasscock and Burr were the only ones under surveillance. There were no other operations that day. The same was true on October 30th. The next day, October 31st, was the day the apartment of Ruddy was raided by Secret Service men, and, of course, the activities of all the operatives were ended.

The activities of the Burns operative McMullin have not been discussed under this subheading, but will be treated separately for reasons that will hereafter appear.

During the first week of the criminal case against Sinclair and Fall, an independent investigation was made by Day through the office of Randall Hagner & Company as to whether or not there were any incumbrances on the home of Juror Kern. This was not conducted through the Burns Agency, nor did this appellant or any of the operatives know that it was being done (Rec. 388 to 397).

IV.

The Effect of the Surveillance on the Jurors.

The Government strenuously attempted to show that there was contact between the Burns operatives and the jurors, but failed. It was then contended that the jurors were conscious that they were being shadowed. The evidence itself, however, successfully demolishes both contentions.

That the Record amply supports this statement is best shown by quoting the words of the Court of Appeals of the District of Columbia in its statement of the record in its certification of questions to this court. The Court of Appeals there said:

> "*The evidence does not disclose that any of the operatives were instructed to approach or approached a juror, nor does it disclose that any juror knew that he was being shadowed.*"

Eight jurors took the stand, seven as witnesses for the prosecution and one as a witness for the defense. Of the seven called by the Government, four jurors, Heaton (Rec. 511, 512), Kern (Rec. 556, 557), Grenfell (Rec. 557, 558) and Glasscock (Rec. 559, 560), testified merely concerning the correctness of the operatives' report of the respective jurors' actions during the trial. They mentioned nothing of consciousness, or contact, or shadowing. One, Mrs. Annetta L. Bailey, a young and comely woman, testified that on the evening of October 28th, while at a bowling alley she be-

came aware of the fact that some men were looking at her (Rec. 510-511). It is interesting to note that the evidence shows that the shadowing by the Burns Agency's operatives of Mrs. Bailey ended on October 21st (Rec. 386).

Juror Herzog stated on the witness stand that some time during the trial he saw a man talking to a mechanic in front of his place of business (Rec. 559). He said it might have been O'Reilly, but he was not at all sure of it (Rec. 560); and at that time he did not know O'Reilly, or who he was. He further testified that during the trial, that while he had a suspicion that he was being followed, he was not aware of it (Rec. 559, 560). His explanation was as follows: One day, while he was driving home for lunch, he noticed a car driving in back of him, which car stopped on the opposite side of the street from his home. However, when he came out of his home after lunch he was not even interested enough to notice whether the car was still there or not; nor did he ever have any idea who was in the car (Rec. 560). The Government did not attempt even to prove that the man whom Juror Herzog mentioned as driving in back of him was an operative; or that the man was even in fact following Herzog; or that the occurrence was more than accidental, or was in any way connected with the Fall-Sinclair criminal case. As far as the record shows, the man driving in back of Juror Herzog was a stranger to and in no way connected with the surveillance. Moreover, Herzog testified, "I cannot identify the man that I saw in the automobile that came up and stopped. I could not

identify him if I saw him again. The different agents of the Burns people were brought in the room where the jurors were, and Burkinshaw asked me and the rest of the jurors to watch them closely and see whether or not I could identify any one of them" (Rec. 560 and 561).

Much was attempted to be made of the testimony of juror Kidwell. On Sunday, October 30th (Rec. 482, 493, 498, 505) Kidwell saw a man at a place known as "Horan's Near Beer Saloon." He had no idea then who this man was. When he later saw Burns operative Klein, in the court house after the mistrial, he identified him as being this man whom he saw at Horan's. Klein and his wife (Rec. 472) testified that on October 30th Klein had discontinued his work in Washington as an operative and was in New York. Klein's reports, introduced by the Government, show this. Kidwell also testified that at another time during the trial, while getting on a street car, he saw a person, whom he afterwards learned to be the Burns operative Merritt, get on the same car (Rec. 482). He did not know who Merritt was at that time, nor that his name was Merritt (Rec. 489). Juror Kidwell knew a man who resembled Merritt so much that he looked at Merritt a second time to see whether or not it was his friend (Rec. 506). He did not see Merritt again (Rec. 506). Kidwell also testified that on one occasion during the trial—he did not know the exact date—while he was sitting on a bench in the Smithsonian grounds eating his lunch, a man approached him and sat down on the same bench and asked him

for a cigarette. As Kidwell had no cigarette, he gave the man some tobacco, with which the man rolled a cigarette. The man thanked him, said it was nice weather and said no more. Kidwell then left and the man remained (Rec. 483, 484, 486). Kidwell did not know the name of this man nor could he identify him (Rec. 489, 498), although he observed all of the Burns Agency's men during the contempt proceeding with a view to identifying them, if possible. In spite of this testimony, the Government attempted to insinuate that operative Stewart must have been the man who thus approached Kidwell, because of the fact that Stewart on one occasion shadowed Kidwell to the Museum Grounds and reported that no one approached him. However, Kidwell testified that he was in the Museum Grounds while serving as a juror nearly every day of the week except when it rained (Rec. 482). The fallacy of this contention is clearly shown by the fact that Stewart shadowed Kidwell only on October 20 and in the early morning of October 21 (Rec. 440 and 441).

On another occasion Kidwell was going through the west door of the court-house and a stranger approached him and asked how he could get in to hear the trial, saying he had been waiting around all morning in an attempt to get in to hear the trial. Kidwell made no answer and the man then asked him what they were doing in the trial and what he thought of it. Kidwell walked into the court-house without answering the stranger (Rec. 490, 491). Kidwell could not identify this man. *He testified that at no time during the criminal trial did he see the men whom he now knows to be Burns Agency operatives* (Rec. 488).

The respondents below produced one witness, William H. Goucher, who testified that at no time during October 23, 1928, was he aware of being shadowed by any one (Rec. 771). The purpose of this testimony, and the effect of it, was to conclusively show that an inference in a report of one of the Burns operatives of that date, that Goucher might have suspected someone was following or shadowing him, was untrue.

The above incident is an example of the care that was taken by the operatives in their shadowing work, for after operative O'Neill, who was shadowing Juror Goucher, became suspicious of the fact that the juror might be aware that he was being followed, O'Neill immediately reported this fact to O'Reilly, and O'Reilly instructed him, "If you think that the subject knows he is being followed, drop him, but be absolutely sure that you know that, and if you think you are wrong, continue on him and do the best you can" (Rec. 530 and 531).

The Government introduced evidence tending to show that there was a conversation among certain jurors in the jury room on the "subject of being watched or being shadowed." What that conversation was the Record does not show. It is not disclosed whether the jurors stated they believed they were being watched or that they believed they were not being watched, or whether they wondered whether they would be watched or would not be watched—the conversation merely was on the subject of being watched. What the subject of conversation was is known only to the District Attorney, who conducted the proceeding below, be-

cause he took pains to limit the answer to one of "yes" or "no." After objection was made to the question as to whether or not there was such a conversation, the District Attorney stated "That calls for a yes or no answer" (Rec. 498). Later in the examination of the witnesses, there was this question: "Now, I am not asking you to tell what they said. Did Jurors Herzog, Holmes and Kern participate in that talk?" And later: "And without going into anything that was said, how long was the talk on that subject continued?" (Rec. 499).

Nowhere in the Record is there any evidence as to what was said, nor is there any question asked by the District Attorney attempting to elicit from witnesses what was said in the conversation among the jurors about shadowing.

V.

Kidwell-King-Akers Incident.

During the trial, Kidwell frequented an establishment on 4½ Street called "Horan's Near Beer Saloon." J. Ray Akers, a conductor of one of the local traction companies, and an acquaintance of Kidwell, frequented the same place. On October 28, 1928, Akers telephoned one Donald K. King, a reporter on the Washington Herald, and the two arranged to meet the same day (Rec. 596). They went to Horan's Saloon, and finding Kidwell outside, Akers invited him to have a drink (Rec. 517, 596). Kidwell accepted the invitation and King bought him a drink (Rec. 596). Akers then commented on the fact that Kidwell was on the

jury and King, of course, knew this fact (Rec. 596). He went there for the purpose of meeting Kidwell and to listen and to talk to him (Rec. 599). The three of them talked about the case for about one and a half hours (Rec. 517, 518, 596, 597, 598). Kidwell went out of the place and remained fifteen or twenty minutes. King waited, as he wanted more definite information. When Kidwell returned, King tried to detain him by asking him to stay and have another drink of intoxicating liquor. Kidwell refused. King did not get any further information, although he tried to do so by keeping Kidwell there, to afford him another opportunity to talk (Rec. 606, 607). King admitted that he gave Kidwell drinks of intoxicating liquor so that he would talk (Rec. 607). King then reported this conversation to the District Attorney (Rec. 525). Both King and Akers then made affidavits stating what had taken place and they were filed in the court the following day, November 1, 1928 (Rec. 600). The conversation that occurred at the instance of King and Akers was one of the causes, and in truth the only real cause of the mistrial. Over the objection of the appellants the testimony relating to the Kidwell-King-Akers incident was introduced, although it was admitted that King was not interested in, or acting for any of the parties to the action, and was not there at the instance of, or on behalf of any of the appellants, nor to find out anything for them (Rec. 611). Indeed their whole attitude was hostile to the appellants. What is most interesting was that this conversation of King and Akers, in violation of the court's direction to the

jurors not to talk about the case to any one, was the only act connected with the mistrial that amounted to a contempt of court. No proceeding was brought against King or Akers, and in fact they were given every protection by the court and the District Attorney.

VI.

Concerning the Burns Agency's Operative, McMullin.

William J. McMullin was a witness for the prosecution. His character was so discredited, and his testimony is so unworthy of consideration that it should be unnecessary to discuss it but for the fact that he was sworn and testified as a witness. Our review of it will be brief.

In September, 1927, McMullin applied for a position as a detective or operative with the Burns Agency under the assumed name of "William V. Long" (Rec. 634). He did this to hide the fact that he was an ex-convict (Rec. 628) and because he had the year previous applied for a position in the Burns agency under his own name and his application had been refused. He not only forged the name of William V. Long, an acquaintance of his, to his application with the Burns Agency, but he used the character and references of Long, so that, when an investigation was made by the Burns Agency before employing him, the character of Long was the one that was investigated. Long's reputation was found to be excellent, hence McMullin was employed by the Burns Agency as William V. Long

and not William J. McMullin. Under the name of Long his application was accepted, and he was sent to Washington as one of the operatives on the work of keeping the jury in the criminal case under surveillance (Rec. 614). He operated ten days, making a report each day, six of which were false as to the facts and nine false with respect to his expense accounts. The only one that did not contain a fraudulent expense account was the one made on October 28 when he worked with another operative, named Merritt, when it was impossible for him to pad his account (Rec. 646).

Based on one of his false reports, namely, the one of October 22, 1928, wherein he stated that he had observed juror Glasscock in company with one of the employees of the Department of Justice, he came to Washington after the mistrial had been ordered and not only made a false affidavit but forged the name of Long in doing so (Rec. 654). He admitted that the affidavit was false (Rec. 639) and denied making diagrams of the Flying Field (Rec. 640). In fact he said that he had never been there. He said that Ruddy gave him the false material to put in this report of October 22nd and the affidavit of November 3rd, while they were both at the Harrington Hotel on the morning of October 22nd (Rec. 618). Ruddy's denunciation of that is wholly justified, not only by the fact that Ruddy was not at the Harrington Hotel on the morning of the 22nd, but was at the Wardman Park Hotel with operative Robbins and the appellant Day (Rec. 767), but also by Judge Wright's detailed and circumstantial account of his preparation of the affidavit and by the

testimony of Mr. Lodge, who was present when the affidavit was prepared and signed.

> "In November, 1927," said Judge Wright on the stand, "I met the witness W. J. McMullin for the purpose of getting from him an affidavit in the contempt case. * * * I saw McMullin on the 3rd of November about four o'clock at my office. He told me he had been at my office the day before, and I, not being there until after four, he had left and gone away.
>
> "I inquired as to his movements in the shadowing of Juror Glasscock. He told me that on the occasion which was identified as that upon which he had shadowed Glasscock to the flying field, that he had been in the vicinity of Glasscock's place of employment, Somerville's Plumbing Supply establishment, that Glasscock came out, entered in his automobile, drove through D Street to Pennsylvania Avenue; that he, McMullin, had observed a two-toned roadster to which his attention was directed because it had forced itself in between him and Glasscock's car; that his attention was attracted by that as well as by the two-tones of the car, and while they were proceeding along Pennsylvania Avenue, he read the number, but that the traffic was somewhat congested and he did not have the opportunity to put the number down on the Avenue, because he had to watch his driving with both hands. As Glasscock turned northwardly from Pennsylvania Avenue, the two-toned roadster followed him; that he, McMullin, followed the two-toned roadster. There was practically no traffic on that street, and that he then took a card from his pocket with

one hand and a lead pencil and noted down the car number on his card, the number which was in the affidavit, the license number of the two-toned car. He said that Juror Glasscock drove to his house; the two-toned car went on without stopping. Glasscock came out with his wife and two children, entered his own car, and drove to the Potomac Flying Field in Virginia. I said, 'the flying field is not in Virginia, it is in Maryland.' I did not know then that there was a flying field in Virginia, but I knew that there was one in Maryland, Bolling Field, because I pass there twice a week every week. He said "No, it is in Virginia.' I said, 'No, you are mistaken. You went across the Navy Yard bridge, didn't you, to get to it?' I motioned with my hand to the direction of the Navy Yard bridge. He said 'No, I did not go across that bridge at all. I went across this bridge down here, the bridge that has a street car track on it, and right below it is a railroad bridge. That is the bridge I went across.' He said, 'At the other end of it, just at the left hand end of the bridge that I went over, is a large yacht club. There are a great many yachts.' I knew that yacht club. That is the Corinthian Yacht Club, that there was a yacht club there, and I had occasion afterward to go to Alexandria, I think it was the 4th of December, being interested I noticed when I crossed the bridge whether or not there was a flying field over in that vicinity, and I saw, much to my surprise, that there was. It was the first time I ever knew that it was there. He told me that there was a parking space on both sides of the entrance to the flying field, and that there were five or six cars

already parked; that Juror Glasscock's car was parked on the right of the entrance, but he, McMullin, undertook to park on the left of the entrance so that Glasscock would not notice him. As he was parking, he noticed the same two-toned car that he had seen following Glasscock on the Avenue, coming up the street. After he had parked his car, he said that he alighted and walked around to the rear of the two-toned car and checked the number. Then he took out the card that he had written the number on and he checked the numbers, and they were the same. Then he looked towards Glasscock's car and saw Glasscock out of his car, or rather a short distance from his car, in conference with a man, and that they talked fifteen or twenty minutes. The man left Glasscock. McMullin watched him until he had entered the two-toned car. Then he drove away. He, McMullin, watched until Glasscock had entered his car and then he followed Glasscock home to his house. I questioned him in very considerable detail, so that I had the story practically in mind, before I undertook to dictate an affidavit. That was in my office on the afternoon of November 3rd." • • • "After dinner I went to Mr. Ruddy's room at the Wardman Park Hotel" • • • "I took a pencil and asked McMullin to sit down at the other end of the table, which he did. He sat down at my right; Mr. Lodge was a little bit behind me on my left. I wrote then in lead pencil, asking McMullin, perhaps six or eight lines in lead pencil, then called to Ruddy—Ruddy was in the other room—and said, 'Mr. Ruddy, we will save time if you will take this up and let the man at the typewriter be copy

ing this, and meanwhile I will write another paragraph for you, and we will formulate the affidavit in that way and save time,' because I was in a hurry. I handed it to Mr. Ruddy and asked him if he had any more papers. He went out in the other room and came back with some Wardman Park Hotel paper, and I wrote on the back of it. I would write about a paragraph, and I suppose I wrote, oh, at least five or six different sheets of paper, inquiring with great particularity of McMullin at the time, and when I would finish the paragraph I would read it over to him and say 'Now, have I got that right?' If there is any change of phraseology, —I do not recall that there was any—it was, of course, corrected. Then I would call Ruddy and Ruddy would take that paper out to the man in the other room, and I would start to write another series of lines, six, eight, nine, ten, or whatever it was, until I got to another period, and Ruddy would take that out. Meanwhile I told—my impression is I told Ruddy to telephone for Mr. Moore, who is the managing director of the Wardman Park Hotel, and who lives at the Wardman Park Hotel, and who is a notary public. I think he telephoned for Mr. Moore; at any rate, Mr. Moore came in but not, my recollection is, until after I had completed the writing of the affidavit. I do not recall whether Moore was there when McMullin and I were reading the affidavit over or not, because I sat with my back to the door and my face to the window. Mr. Shoemaker brought in the finished affidavit, with at least one carbon, and perhaps more. I have one carbon which I got at that time. I handed the original affidavit to McMul-

lin and read the carbon—not aloud. I said 'Now, read it over. Read it with care.' I read the carbon as he was reading the original. When he had finished reading it he said 'That is all right,' and started to take up the pen and sign it. Mr. Lodge said, 'Let me see that before you sign it,' and Mr. Lodge took it and read it and said 'That is all right; that is just what you have said, McMullin.' McMullin signed the affidavit. During the time that I was at the table, I have forgotten at just what period, McMullin took a piece of paper and drew a diagram of the entrance to the Flying Field and showed Mr. Lodge where Glasscock's car was parked and where his car was parked. Long is the name he used and I called him 'Long.' I saw the diagram he drew, and heard the discussion between them while he was drawing it. He had done the same thing in my office in a general way. When I told him that there was no Flying Field over there in Virginia but the Flying Field was in Maryland, he told me about going over the bridge that had a yacht club at the other end of it at the left hand end of the bridge, and he took a piece of paper that was on my desk and a pencil, and he said 'Here is the end of the bridge, and a street runs on that way, and another street turns around this way, and here is the Flying Field,' and he drew the entrance way. He said 'Glasscock's car was over here and I parked over here, and that is where I saw this two-toned car when it was parked.' I did not go to the entrance of the Flying Field. I had occasion to go to Alexandria one afternoon to attend to some corporate meetings, and I drove the straight road from the end of the bridge. I

understand the entrance to the Flying Field is on another road which you turn off to the right, and it is around the corner. I did not go around the corner, but I saw the sign up of the Flying Field. McMullin explained the location of the buildings at the Flying Field to Mr. Lodge. He did not explain any buildings to me in my office. Long read over the affidavit thoroughly, word for word. Lodge read it too. Every word of the affidavit was gotten from McMullin himself. He didn't have any report at my office, but he had the original report from New York at the hotel. When I was writing the affidavit in sections, when I would read a section to him, I would ask, 'Is this right?' I don't suppose I used the word 'true.' I had no suspicion it was not true. There is no doubt McMullin knew every word that was in that affidavit and every word he told me was correct with the idea he was going to swear to it. He came to my office on November 2nd when I was not there. He said that I telephoned Ruddy from my office while he was in my office. I did not. I did not telephone Ruddy. Welchans was with him a part of the time when he was in my office. • • • *I had no communication with the Burns, either direct or indirect, about this affidavit before it was prepared. I could have found the Potomac Flying Field entirely from the description McMullin gave me. I had not talked with anybody who is connected with the Burns Agency except Long, or McMullin about drawing this affidavit, prior to the time it was* drawn" (Rec. 730, 731, 732, 733, 734, 735, 736).

Lodge, a reputable member of the Bar of the District of Columbia, testified that he was present at the Wardman Park Hotel when Judge Wright drew the affidavit and McMullin signed it. He said:

> "McMullin, at Wardman Park when the affidavit was prepared, read it paragraph by paragraph before it was typewritten and after it was typewritten. I sat at the same table with Judge Wright when he drew the affidavit. He drew it in sections, paragraph by paragraph. On each occasion when it was brought back from the typewriter McMullin read it again, and read it before it went out to the typewriter. I knew Mr. Moore, the notary, by sight, but not personally. *I did not see or talk to William J. Burns or Sherman Burns about the making of that affidavit.*" • • • "*I was never authorized or directed either by William J. Burns or Sherman Burns or Charles L. Veitsch to deliver those affidavits to Justice Siddons. I hadn't talked to them*" • • • (Rec. 738).
>
> "McMullin drew another diagram at the Wardman Park on the occasion of the drawing of the affidavit. It was in detail, like the other one, and substantially the same. I had never heard of the Potomac Flying Field prior to either one of those occasions. Since this trial began I went down there to examine it with a view of seeing how it fitted in with his description. I found that the location of the things at the flying field complied accurately with the descriptions given by McMullin." • • •
>
> "When I went to the Potomac Flying Field in Virginia, I crossed the 14th Street railroad bridge. This is a street railway track on that

bridge. There is a street railway bridge a little to the left of that bridge as you go across to Virginia. There is a yacht club and a large number of boats congregated together on the left side of the bridge that you cross on the Virginia shore. The Potomac Flying Field is a half or three-quarters of a mile from the Virginia end of that bridge. As you leave the bridge on the Virginia end of that bridge, there are two roads, one which goes to the left, which takes you into Alexandria; the other to the right goes up toward the radio station and passes the Potomac Flying Field. The entrance to the flying field is on the right-hand road" (Rec. 738, 739).

McMullin was proved to be a self-confessed perjurer (Rec. 639), forger and ex-convict (Rec. 628). He testified falsely about the length of time he spent in the Ohio Penitentiary (Rec. 702). Defendants offered to show that this man was a deserter from the United States Army, a bigamist, and a man engaged in all manner of fraudulent enterprises. Four witnesses, William V. Long (Rec. 705), Harry F. Stahl (Rec. 708), Mrs. Janet Lantz (Rec. 709), and A. Lincoln Till (Rec. 710) (who, by the way, was one of the references which McMullin gave when he applied for employment in the Burns Agency under the name of "William V. Long") testified that they were acquainted with McMullin, that they knew McMullin's reputation for truth and veracity was very bad, and that they would not believe him under oath.

Generally and finally we charge that his testimony was so discredited and unworthy of belief that the

Trial Justice did not consider and could not have considered him or his testimony in rendering his judgment against the accused or any of them. The Government, to bolster up its case, sought to make it appear that operative McMullin, upon whom the Government relied to a large extent, repented of his part in the surveillance and of his falsification of reports because of the fact that he confessed to Owen J. Roberts and Atlee Pomerene, on October 24, 1927, that the surveillance was being carried on. But the Government's position falls when it is considered that after the date of the confession, so-called, McMullin continued to falsify his reports and to make fictitious expense accounts, and even went so far as to execute a false affidavit on November 3, 1927, and to perjure himself before the Grand Jury on November 8, 1927, by swearing that he was the genuine William V. Long. (Rec. 646, 654 and 639 and 646, 647.)

VII.

The Government's Knowledge of and Tacit Consent to the Surveillance.

The agents of the Government raided the headquarters of the Burns Agency and seized the records therein on October 31, 1927, thus putting an end to the surveillance. The mistrial occurred the next day. Eight days before the seizure of the records, complete knowledge of the surveillance came to Peyton Gordon, then United States District Attorney, and to Owen J. Roberts and Atlee Pomerene, special counsel for the Gov-

ernment in the Fall-Sinclair Criminal Case. The Government, by its principal witness, McMullin, proved without any dissent on the part of counsel just mentioned, that on October 24, 1927, McMullin laid bare the whole plan of the surveillance to Government counsel. Notwithstanding this knowledge, counsel for the Government permitted the surveillance to continue; were not impressed with its so-called viciousness; did not, as far as the Record shows, bring it to the attention of the court; took no steps whatever to curtail it until eight days thereafter, when upon hearing of the Kidwell-King-Akers incident, they made application for a discharge of the jury.

VIII.

Concerning the Filing of the McMullin Affidavit.

During the trial no attempt whatever was made nor was there any evidence tending to place the burden of preparing and filing the McMullin affidavit on this appellant, but it was attempted to show that William J. Burns was solely to blame; nor did the trial justice in his opinion find or charge that appellant had anything to do with the filing of the affidavit.

It was further shown by the testimony that the affidavit was filed some time after the main case had been concluded and there was nothing pending before the court, but the most important fact here to be noted is that *it was not filed by any of the respondents*, but by the trial justice himself. Judge Siddons, during the proceedings, said: "It was filed by the court. I filed

it. It was never asked to be filed and I filed it" (Rec. 1, Addition).

IX.

The Activities of this Appellant, W. Sherman Burns

It appears elsewhere in this statement of facts that this appellant limited the scope of the employment by his original instructions to Ruddy, and then by his checking up these instructions to Ruddy to see that his understanding of the scope of the employment was correct. He not only in his first instructions to Ruddy limited the work to a surveillance of the jury, but he even took the precaution of instructing Ruddy to call him back on the telephone after Ruddy saw Day and got the details of the work. Ruddy did this and told him that his assumptions were correct as to the character of the work, and he again limited the activities of the men to a surveillance of the jury. He also instructed both Ruddy and the men, and instructed Ruddy to instruct the men that they were not to approach, embarrass or in any way permit themselves to be known to the jurors, or to permit the jurors to know that they were being shadowed by them. He went even further. After his talk with Day he called Mr. Scanlon, the manager of the New York office of the Burns Agency, and talked over with him the selection of the personnel of the operatives to be employed. He told Mr. Scanlon that it was to be purely a surveillance job and that he wanted "shadow" men, and that the men who were to come to Washington would be in-

structed not to come in contact with any of the jurors or embarrass them in any way and that if a juror became aware that he was being shadowed the operative should walk away and discontinue the surveillance (Rec. 776).

He did not take any part in the activities of the Agency in connection with the work in Washington between October 18th, the night on which he had his talk with Ruddy, and October 31st, the day on which the records of the Agency were seized (Rec. 778). He did not read any of the reports until November 2 (Rec. 778) (after the mistrial). He never saw the O'Reilly report on juror Kern or any other report on that juror until November 7th when Mr. Burkinshaw, the assistant district attorney, showed them to him when this appellant appeared before the grand jury (Rec. 778). On November 3rd he sent McMullin's report of October 22nd to Washington by special messenger at the request of Ruddy, who said that the client's attorney wanted the original written report immediately. He did not know that they wanted it as a basis of an affidavit; and he learned for the first time on November 5th that the affidavit had been made by McMullin (Rec. 784). When he sent the report to Washington he had no knowledge or suspicion that there was anything wrong or inaccurate about the report (Rec. 778). When Ruddy informed this appellant that he, Ruddy, had been taken before the grand jury, this appellant told him to turn over everything he had to the grand jury for its use (Rec. 784, 785). This appellant did not at any time authorize Rudy or O'Reilly or Day, or any-

one else, to do any work or engage in any activities for the Burns Agency or for him personally, other than to shadow the jury in the manner set forth in his instructions to his subordinates (Rec. 777). He did not know of the visit of O'Reilly to the Kidwell house; he did not authorize it and it was not within the scope of his instructions. Nor did he know of the investigation of the Kern mortgage, and that also was not within the scope of his instructions. He never knew of or authorized or countenanced the insertion of false statements in the McMullin reports, either by or through Ruddy or anybody else in the Burns Agency (Rec. 778). At no time before November 8th did he know or suspect that any of the operatives connected with the work of shadowing the jury had to any extent inserted false information in any of their reports. He never heard any reports challenged until juror Glasscock and H. R. Lamb, an employee in the Department of Justice, challenged the McMullin report when they appeared before the grand jury on November 7th (Rec. 778). Beyond the first conversation, he had no communication, directly or indirectly, with Pay regarding the Fall-Sinclair criminal case, nor did he have any conversation at all with Mr. Sinclair (Rec. 786). To briefly summarize: This appellant, as the manager of the Burns Agency, merely accepted the employment; and, accepting it, strictly defined its limitation. He had no part in the making or disposition of the so-called McMullin affidavit other than to send down the report from which it was made, not knowing what was to be done with it. After the seizure of the records he cooperated in every

way with the District Attorney. The District Attorney, in addressing the court, said, "and with respect to Sherman Burns, I feel that when he was summoned before the grand jury that he did bring the papers and records that were called for. I feel differently towards him for that reason than towards any of the others, and in the presentation of the matter before the grand jury he coöperated very extensively with the District Attorney" (Rec. 856).

X.

Concerning the Practice in the Department of Justice of Shadowing Jurors.

It became apparent from the outset of the case that the trial justice was of the opinion that the mere shadowing of jurors, irrespective of the effect such shadowing might have had on the due administration of justice, was contempt of court. Indeed, he so ruled at the very beginning of the proceeding, and the major portion of the trial was taken up with testimony that related purely to the surveillance of jurors. This testimony was admitted and considered by the trial court, over the objection of all the respondents, counsel taking the position that before such testimony could be introduced or considered it would have to be shown that the particular acts complained of obstructed, or tended to obstruct the administration of justice. When it came time for the respondents below to introduce testimony it became necessary, to meet the evidence offered by the Government, to show that the practice of shadow-

ing jurors, even by the Government, in criminal cases was one of long standing, and not an assault upon the administration of justice, as the trial court was bent upon deciding, and as the District Attorney contended. To accomplish this a large number of witnesses, consisting of two former chiefs of the Bureau of Investigation with the Department of Justice and thirteen former special agents or detectives of that Bureau were offered as witnesses, and by them testimony was proffered that a practice existed in the Department of Justice, extending over such a long period of years as to ripen into a custom, of shadowing jurors in criminal cases and keeping them under a close, intimate surveillance, or to use the language of the trial justice, "espionage"—in other words, observing the jurors exactly as was done by the appellants in the Sinclair-Fall case.

Testimony was proffered to show that three or four years ago, in the very court room in which the contempt case was tried, the same District Attorney who prosecuted this appellant below had ordered and directed that not only the jurors in a certain criminal case be kept under a close and intimate espionage, but counsel for the defense as well. Many other instances of shadowing jurors by the Government were offered, but in every instance the trial court refused to admit the testimony over the objection of counsel. The testimony of this character was offered to show the custom of the Department of Justice and to purge the respondents of contempt, and also to minimize the character of the contempt and mitigate any punishment that might be imposed by the court. This prof-

fered and rejected testimony appears on the following pages of the Record: 712, 716, 719, 721, 723, 751, 787, 790, 793, 797, 799, 802, 803, 804 and 805.

The testimony of Mr. A. Bruce Bielaski, a former chief of the Bureau of Investigation of the Department of Justice from April, 1910, to February, 1919, is an example of the testimony that was offered and excluded. In part it is as follows:

> "Q. During the time that you were chief of the Bureau of Investigation of the Department of Justice do you know as a fact that it was the custom and practice of the Department, upon request being made by special agents in the field, or by the United States District Attorneys in the several districts of the United States, to assign men to shadow jurors who were sitting in cases which the United States was prosecuting individuals or corporations for alleged crimes and offenses against the United States?
>
> "Mr. Gordon: We object, if the court please.
>
> "Mr. Hoover: We make the offer that if the witness were permitted to answer he would testify that he did know that such a custom and practice had existed, and we offer to prove that on the ground, first, that the usage, extending over this period of years, had ripened into a custom, and that that custom became the law, and that being so there should be no contempt of court under the facts in this case as related to the question of usage. Your Honor has already ruled on that. In addition to that, I offer it on this ground that in a case where a man is charged with contempt of court, he has the right during the proceedings investigating

the matter of contempt, to offer any evidence which may tend to purge him of the contempt, either by minimizing the character of the contempt or mitigating any punishment that might be imposed by the court. We offer it on both grounds, may it please the court."

The objection was sustained and exception duly noted.

"Mr. Douglas: I make the same offer on behalf of Burns and reserve an exception.

"Mr. Wright: Mr. Day also makes the same offer and notes an exception.

"Q. I ask the witness this question subject to your Honor's ruling, if it is not a fact that during the time that you were the chief of the Bureau of Investigation of the Department of Justice, over the period of 1912-1919, as you have testified, that representations were made by men in charge of special agents, or by special agents, of activities of these special agents in shadowing jurors who were selected and sworn in criminal cases in which the United States was prosecuting its citizens for alleged violation of the law, and that such representations were brought to the attention of the Attorney General who was in office at the time when such reports were received in the Department of Justice?"

The question was objected to on the same grounds, the objection sustained and exception duly noted by all respondents.

"Q. Did or did not the several Attorneys General who were in the office during the time

that you were in office, in the incumbency of your office in the Bureau of Investigation in the Department of Justice, know of or approve the custom of shadowing empanelled jurors by the United States representatives?"

The question was objected to on the same ground, the objection sustained and exception duly noted by all the respondents, and the proffer made that the witness would say that they did if permitted to answer (Rec. 788, 789, 790).

XI.

THE TRIAL COURT'S RULING.

After the conclusion of the evidence, the trial court rendered his finding of law and fact in the form of an opinion given in open court; and after motions duly made to discharge this appellant; and exceptions duly noted to the findings of law and fact, this appellant was adjudged guilty of contempt of court, and was sentenced to pay a fine of $1,000. The opinion of the court will be discussed in detail in a subsequent portion of this brief.

POINTS OF LAW UPON WHICH THIS APPELLANT RELIES.

The respondent, W. Sherman Burns, having appealed to the Court of Appeals of the District of Columbia from the final judgment entered in the above entitled cause, and the said cause having been certified to the Supreme Court of the United States, and the entire

Record having been brought up, states that the points upon which he intends to rely in this court in this cause are as follows:

POINT 1. The petition did not allege facts constituting contempt of court.

POINT 2. There was no evidence adduced at the trial below upon which the findings of the court could be legally based.

POINT 3. The trial court erred in admitting evidence of the operatives reports.

POINT 4. The trial court erred in not admitting testimony as to the intent of this appellant.

POINT 5. The trial court erred in admitting evidence of things done after the mistrial of the Fall-Sinclair criminal case and when there was no cause on trial before the court.

POINT 6. The trial court erred in not admitting evidence that there was no consciousness of the surveillance in the mind of any juror.

POINT 7. The trial court erred in admitting evidence of acts of persons not shown to be connected with any of the appellants or with those acting in their behalf.

POINT 8. The court erred in limiting the cross-examination of Frank J. O'Reilly, a Government witness.

POINT 9. There was no contempt of court committed by this appellant with respect to the preparation and filing of the McMullin affidavit.

POINT 10. In view of the rulings and findings of the trial court, the court should have allowed the introduction of evidence concerning the practice and custom of the Department of Justice of the United States of shadowing juries in criminal cases.

POINT 11. The trial court erred in admitting and considering testimony relating to the Kidwell-King-Akers, incident, with which the appellants had nothing to do.

POINT 12. The trial court erred in restricting the right of the appellants to discredit the Government's witness McMullin, both by limiting the cross-examination of the witness and by rejecting testimony concerning his previous life and relating to his fraudulent acts.

POINT 13. The findings of law and fact made by the trial court in the decision at the conclusion of the case are erroneous.

ARGUMENT.

POINT 1.

The Petition did not Allege Facts Constituting Contempt of Court.

The petition upon which the contempt proceedings below are based is utterly lacking in any averment or suggestion that any contact, direct or indirect, was ever made or established by the respondents or anyone acting in their behalf. There is no charge that any juror

was ever conscious of being observed. It is devoid of any allegation charging obstruction of, or any tendency to obstruct the administration of justice. If it charges anything, it is an observation of the jury, at the instance of the appellants, by a group of detectives during the trial of the Fall-Sinclair criminal proceeding.

The allegations of the petition constitute an attempt to charge a *conspiracy* to commit a contempt of court and nothing more. This is not sufficient. Conspiracy to commit a contempt of court is not contempt of court. The designs of the conspirators must be carried into action and effect, and the acts done must in themselves obstruct, or directly tend to obstruct the due administration of justice and the petition must so allege. This is axiomatic. It is very clear that the Government misconstrued its cause of action and labored under the impression that if it could sustain the charge that the respondents had entered into a conspiracy to commit a contempt of court, that they could be convicted of criminal contempt of court. This is apparent from the remarks of the District Attorney in his opening statements (Rec. 76, 77 and 78).

The motion to dismiss the petition made at the outset of the trial should have been granted because the facts as alleged therein do not constitute a contempt of court. The same legal propositions that were involved in the consideration by the trial court of the motion to dismiss the petition were involved in the argument of the law bearing on the trial court's ruling in overruling the motion to discharge the appellants at

the conclusion of the Government's case, and the motion made at the end of the whole case, and for convenience these questions of law are considered, and this court is respectfully referred to the following division of our argument.

POINT II.

There was No Evidence Adduced at the Trial Below upon Which the Findings of the Trial Court Could be Legally Based.

(1) POWER OF FEDERAL COURTS TO PUNISH FOR CONTEMPT.

It is recognized that the Federal courts have inherent joint power to punish persons for contempt of court. It was so stated by Mr. Justice Field in *Ex Parte Robinson*, 19 Wall., 505, 513; 22 L. Ed., 205, as follows:

> "The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the court, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they become possessed of this power."

See also:

Ex parte Terry, 128 U. S., 289.

Erlenbecher et al. vs. District Court, 136 U. S., 267.

Under the Judicial Code of 1789 the Federal courts were vested with power to punish, by fine or imprisonment, at the discretion of the court, all contempts of authority. Because of the adoption of a practice by certain Federal judges, prior to 1831, of punishing, as contempt, criticism of themselves or of their decisions, such as imprisonment by District Judge Peck of an attorney who had criticized one of his decisions, Congress in 1831 enacted a statute to limit the power to punish for contempt in the Federal courts. This statute, originally cited as 4 Stat., 487, was reenacted, without change, in its substantive provisions as Section 268 of the Judicial Code. It reads as follows:

> "Administration of Oaths: Contempts. The courts shall have power to impose and administer all necessary oaths, and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts (R. S. 725; Mar. 3, 1911, c. 231, 268, 36 Stat. 1163)."

While this section was undoubtedly intended to be one of limitation upon the power of the Federal courts (see *Cuyler vs. Atlantic et al. R. Co.*, 131 Fed., 97, and

Ex parte Robinson, supra), this court, in the recent case of *Toledo Newspaper Company vs. United States*, 247 U. S., 407, commenting upon the effect of the statute, said:

> "The provision conferred no power not already granted and imposed no limitation not already existing. In other words, it served but to plainly mark the boundaries of the existing authority resulting from and controlled by the grants which the Constitution made and the limitations which it imposed. * * * The provision, therefore, conformably to the whole history of the country, not minimizing the constitutional limitations, not restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given by summarily treating such acts as a contempt and punishing accordingly."

But while the power of Federal courts to punish for contempt is inherent and recognized, it is a power which must be used sparingly and with great caution and deliberation. To quote the language of the court in *Phillips Sheet, etc., Co. vs. Amalgamated Association of Iron, Steel, etc., Workers*, 208 Fed., 335:

> "The purpose in invoking the exercise of such power is the enforcement of law and of lawful orders and the punishment of acts of disobedience. A court thus called upon to enforce the law may itself keep well within its limits. It

> is not a party to the proceeding. In punishing for contempt, the judge acts impersonally and has no interest or concern other than the law should be obeyed and enforced. To justify punishment * * * the charge against the accused and the court of procedure must meet legal requirements, *and the proof must conform to the settled rules of evidence.*" (Italics ours.)

And in *Gompers vs. Buck's Stove & Range Co.*, 221 U. S., 418:

> "*The amplitude of the power is a command never to exert it where it is not necessary or proper.*" (Italics ours.)

So in the case of *In re Gitkins*, 164 Fed., 71, 75, the court said:

> "The power of the courts to punish for contempt has always been looked on in this country with much jealousy and a very strong disposition shown in all jurisdictions to restrain it. It has been declared to be arbitrary in its nature (*Batchelder vs. Moore*, 42 Cal. 412) and to be an exception to the provisions of the Constitution of the United States and not to be extended in the least degree beyond limits imposed by the statute (*Boyd vs. Glucklich*, 116 Fed., 136). * * * The proceeding is in its nature criminal and must be governed by the strict rules of construction employed in criminal cases."

Anderson, Circuit Judge, in the recent case of *Coll vs. United States*, 8 Fed., 2nd Series, 20, 24, held:

> "We may observe, generally, that it is now settled by decisions of the highest court in the

land that the broad, almost unlimited, power to punish summarily for contempt, asserted by many courts, may constitutionally be, and has been, limited by legislative enactment. It is now beyond question that the Act of 1831 (Judicial Code, p. 268) and sections 21, 22 of the Clayton Act of October 15, 1914 (38 Stat., 738 (Comp. St. p. 1245*a*, 1245*b*)) are, in the federal courts, valid restrictions on powers which many courts have asserted as inherent in all real courts.

"Another recent and significant decision showing the critical care with which the Supreme Court of the United States is now guarding this vitally necessary, but highly dangerous, power to punish for contempt, is *Cooke vs. United States*, 267 U. S., 517; 45 S. Ct. 390; 60 L. Ed., 767, decided April 13, 1925."

(2) In Criminal Contempt Proceedings the Accused is Presumed to be Innocent and his Guilt must be Proved Beyond a Reasonable Doubt.

The above principle was announced by this court in *Gompers vs. Buck's Stove & Range Company, supra*, as follows:

> "Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself."

And in the recent case in the Court of Appeals of the District of Columbia of *Lombardo vs. United States*,

decided on November 5, 1928, and reported in 56 W. L. R. 833, Mr. Justice Robb, speaking for the court, said:

> "Counsel for the Government frankly concede that in criminal contempt as in criminal cases the presumption of innocence obtains and that proof of guilt must be beyond a reasonable doubt. (See *Gompers vs. Buck's Stove & Range Co.*, 221 U. S., 418; *Michaelson vs. United States ex rel. Chicago, St. Paul, Minneapolis & Omaha Railway Company*, 266 U. S., 42)."

This rule is so firmly established that it is hardly necessary to cite any decisions—certainly no others than above.

(3) The Essential Characteristic of an Act of Contempt is Its Tendency to Obstruct the Administration of Justice.

Section 268 of the Judicial Code, which limits the power of the Federal Courts to punish for contempt, states that this power "shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice," or misbehavior of officers of court, or the disobedience to a specific order or command of the court. The acts which these respondents were charged with having committed were not done in disobedience of any order of the court. Nor were the acts committed "in the presence of the court." Therefore, before they can be considered in contempt, their acts must be shown to have had the tendency "to ob-

struct the administration of justice." As was said by the Court in *Cornish vs. United States*, 299 Fed. 283, 284:

> "Where there is a prosecution, as for contempt, under section 268, Judicial Code (Comp. St. Par. 1245), and where it is not claimed that the alleged misbehavior was committed in the physical presence of the court, or constituted disobedience to an order, it is essential that the misbehavior shall have been 'so near thereto as to obstruct the administration of justice.'"

This "tendency to obstruct the administration of justice" is the one essential characteristic of contempt of court. Unless this element is present no act of contempt can be held to have been committed; while if the element is present the act is generally held to constitute contempt, regardless of the presence or absence of any other factors.

So, for example, we find the Supreme Court of the State of Mississippi holding that being in a court room in an intoxicated condition does not constitute contempt of court, if the fact is not brought to the attention of the court, and the business of the court is in no way interrupted. This was decided in the case of *Neely vs. State*, 98 Miss., 816; 36 L. R. A. (N. S.), 138. "A direct contempt," said the court in that case, "consists of such conduct or language on the part of the contemnor as interferes with the orderly administration of justice. * * * *There can be no such contempt of court unless the trial judge is conscious of it.*" (Italics ours).

And in *Harwell vs. State*, 78 Tenn., 544, it was held that while any attempt to control the action of the grand jury is contempt of court, a mere inquiry of a grand juror as to what had taken place in relation to a particular case is not.

Again it was held in *ex parte Wright*, 64 Tex. Cr. Rep., 171, that where, in contempt proceedings in the district court, for interfering with one of the special veniremen, the testimony of the veniremen did not indicate that relator undertook to influence him, or even to talk about the case in which he was summoned in any way; but the conversation between the juror and relator was that the latter said "You are on the jury next week," to which the juror replied, "Yes, I know I am," when they separated, the same was insufficient to support the judgment for contempt.

On the other hand, it has been decided by the Federal Courts that the clause " 'so near the presence of the court as to obstruct the administration of justice' applies to all acts of misbehavior, whose tendency and effect is to interfere with the administration of justice, wherever the acts may be committed. The test of the requisite of nearness is made by Congress to depend upon the effect of the act upon the administration of justice. If obstructive, in fact, it will be held to have been committed near enough the presence of the court to come within the meaning of the act." *United States vs. Huff*, 206 Fed., 700, 705.

"Tendency" as applied to criminal offenses has been most ably defined by Judge Cardozo in the recent case

of *People vs. Rizzo*, 246 N. Y., 334; 158 N. E., 888, where he said, at page 336:

> "The word 'tending' is very indefinite. It is perfectly evident that there will arise differences of opinion as to whether an act in a given case is one *tending* to commit a crime. 'Tending' means to exert activity in a particular direction. Any act in preparation to commit a crime may be said to have a tendency towards its accomplishment. The procuring of the automobile, searching the streets looking for the desired victim, were in reality acts tending toward the commission of the proposed crime. The law, however, has recognized that many acts in the way of preparation are too remote to constitute the crime of attempt. The line has been drawn between those acts which are remote and those which are proximate and near to the consummation. The law must be practical, and therefore considers those acts only as tending to the commission of the crime which are so near to its accomplishment that in all reasonable probability the crime itself would have been committed, but for timely interference. The cases which have been before the courts express this idea in different language, but the idea remains the same. The act or acts must come or advance very near to the accomplishment of the intended crime."

Along the thought so ably expressed by Judge Cardozo in the Rizzo case, *supra*, is a well-known article "The Proximate Consequence of An Act" by Joseph H. Beale, Esquire, appearing in Vol. 33 (March, 1920)

Harvard Law Review, page 633, which, for the convenience of this court, we have appended to this brief.

(4) CONTEMPT DOES NOT DEPEND UPON THE INTENT OF THE CONTEMNER, BUT UPON HIS ACT.

Chief Justice Taney, in the early case of *Wartman vs. Wartman*, Taney, 362 Fed. Cas. No. 17210, made the following statement which has been quoted with approval in numerous subsequent cases:

> "As regards the question whether a contempt has or has not been committed, it does not depend upon the intention of the party, but upon the act he has done. It is a conclusion of law from the act."

So we find the Federal Circuit Court of Appeals for the Ninth Circuit in the cases of *Kelly vs. United States* and *Galen vs. United States*, reported together in 250 Fed., 947, holding Kelly and Galen in contempt of court for conversing and drinking with jurors in a hotel lobby and in a bar room, even though there was no evidence that the respondents had done the acts with any intent to influence the jurors or with an ulterior motive whatever. The court declared the test of contempt to be whether "such acts and communications were knowingly and willfully done and had the tendency to influence improperly the action of the jury."

Attention may also be called to the following state cases, in which persons have been held in contempt of court for conversing with jurors in a pending case, even though the act may have been done without

ulterior motives: *State vs. Brewer*, Del. Gen. Sess., 104 A 604; *Murphy vs. Wright*, 167 Iowa, 75; 148 N. W., 985.

(5) Intent to Commit Contempt Cannot Make an Act Contempt, Unless the Act Done Actually "Tends to Obstruct the Administration of Justice."

In an old Welsh triad is found:

> "*Three things are not to be redressed; a thought, a frown, and an intent without an act*" (Wigmore: Panorama of the World's Legal Systems).

An act may constitute a crime, even though it fails of its purpose or objective. A criminal contempt is *sui generis* in the law. Criminal intent, or *mens rea*, is not a necessary element. It may be committed by accident, or even with good intent on the part of the actor, if the act tends *in fact* to obstruct the administration of justice. The converse of the proposition is equally true. One may intend to bribe an entire jury. He may lay his plans, and obtain the money to carry out his design. He may even discuss it with third persons, but if his act stops there, if the jurors are not approached, and they have no knowledge of such designs, he does not commit contempt of court, because his act does not have, and cannot have, a tendency "to obstruct the administration of justice."

The decisions of the Federal courts on this question are definite and unqualified, with no dissent among them.

In the case of *Doniphan vs. Lehman*, 179 Fed., 173, the respondents, one of whom had been the plaintiff and the other one of the defendants in a civil action, were charged with contempt of court in conspiring together to use the court as a means and an end to destroy the business of other defendants in the civil action. The defendant Lehman was charged with having agreed with the plaintiff to give testimony which would result in the plaintiff being able to obtain large money judgments against the other defendants, in return for which service Lehman was to receive money from the plaintiff. Obviously such a conspiracy, if successful, would "tend to obstruct the administration of justice," in that it would make the court an instrumentality for the purpose of accomplishing the fraudulent scheme of the respondents. But there was no charge in the information under which the respondents had been held for contempt that their conspiracy actually effected the result sought. Their scheme had been detected in time to prevent its fruition. On this state of facts, Judge Baker of the Circuit Court for the District of Indiana declared that no criminal contempt had been committed by the respondents, and that conspiracy to commit contempt itself could not be considered as contempt of court. The court said:

> "A conspiracy to misbehave in or near the presence of the court for the purpose of obstructing the administration of justice does not of itself constitute a punishable contempt. *It is the act of misbehavior in or near the presence of the court and not the conspiracy which constitutes the contempt.* If the complainant

Doniphan and the defendant Lehman formed the alleged conspiracy they committed no contempt in so doing, and if they have committed overt acts in furtherance of the conspiracy they have not made themselves amenable to punishment for contempt, unless their acts constitute misbehavior in or so near the presence of the court as to obstruct the administration of justice." (Italics ours.)

The case of *United States vs. Carroll*, 147 Fed., 947, is even more closely in point. In that case one William Carroll was charged with contempt of court because of certain acts done in connection with the criminal trial in Montana of his brother, Joseph T. Carroll. It was alleged that William Carroll approached a man named Hopkins, handed him a list of the jurors who had been empaneled to try his brother, asked Hopkins if he was acquainted with one of the members of the jury, and stated that if he had any other friends on the jury he hoped he would use his influence with them for the benefit of Carroll's brother, the defendant. It was alleged that Carroll also stated to Hopkins that he had other lists which he was handing around. Hopkins neglected or forgot to comply with Carroll's request, and did not communicate with any of the jurors.

The court properly declared that "the question resolves itself into whether this demeanor on the part of Carroll tended in any manner to obstruct the administration of justice," and held that "the endeavor Carroll made with Hopkins to have him use his in-

fluence with the jury, for the purposes indicated, did not constitute a contempt punishable under Section 725 Rev. St., which defines and limits the power of the court in the premises." Judge Wolverton even went so far as to say:

> "I am firmly convinced that it was the purpose of Carroll to reach one or more of the members of the jury through Hopkins, if the latter could be had to serve his purpose. The act was wilful, vicious and reprehensible and should be visited with appropriate punishment, but the court is unauthorized to mete it out in this proceeding."

The opinion also contains a careful analysis of the meaning of the word "obstruct" as used in Sec. 725 Rev. St. The court refers to Sec. 5399 Rev. St. as a cognate section to Section 725, and quotes from the case of *United States vs. Rittinger*, 24 Fed. Cas., 1149, No. 14598, in which it had been held: "It will be necessary for you to find that the defendant, Rittinger, did some act or acts which obstruct or impede the due administration of justice." "Thus giving the impression," said the court in the Carroll case, "that the act complained of must have the direct effect *within itself* to obstruct or impede the administration of justice."

Further analyzing these key words in Section 725, Judge Wolverton, in his opinion, continued as follows:

> "In a much later case, *United States vs. Seeley*, 27 Fed. Cas., 1010, No. 16248 A, the court discusses directly the import of the words

'obstruct' and 'impede' as employed in the same section 5399. It says:

"'To "obstruct," independent of the acceptation the word has obtained in the criminal law, would seem to stand *ex vi termini* a direct and positive interposition which prevented, or tended to prevent, the action of the officer of court in respect to a matter then to be proceeded in. "Impede" must necessarily bear a similar import, and, if there be any discrimination between the two terms, it can only be that the same direct and positive interference may, without amounting to a complete obstruction, become an impediment to the action intended to be intercepted. The intention of the legislature to give these terms an application only to direct acts of violence or menace is inferable from the construction that the endeavor is made equally criminal with the entire completion of the purpose. An endeavor to obstruct or impede, etc., by threats or force, would necessarily imply the effort to put forth some act, which in its natural, if not necessary consequence, must be attended with an obstruction, and with a forced and compelled interruption of further progress in the administration of justice.'

"Thus again indicating that the act put forth must itself have the direct and natural effect to obstruct or impede. If this be so, then the act of Carroll in endeavoring to get Hopkins to do something for him or his brother, with the jury, which Hopkins never consented to, could, of itself, have no direct or sensile effect to obstruct or impede the due administration of justice. It was an endeavor which in no way reached or influenced the jury, and, therefore,

> tended in no way to impede justice or the administration thereof. If the endeavor had been directly within the jury or a member thereof, then it would have reached the mark; but an effort to get a third person to act, who declined, stops short of a misbehavior that is effective to obstruct or impede justice, or to hinder its administration."

And so also in the state courts, a bare attempt to obstruct the administration of justice, that does not reach its mark, is held not to constitute a criminal contempt. The question was carefully considered by the Texas court in the case of *Ex parte McRae* (Tex. Cr. App.), 77 S. W., 211, where the court said:

> "We do not understand the authorities to go to the extent of holding that the bare effort on the part of relator to secure the service of a party to find out how the jury stands in reference to a case then on trial would, *per se*, authorize punishment for contempt, unless the party so employed by the relator should make some effort to tamper with the jury, or hold out some inducement to the jury to decide one way or the other, or should talk with the juror about the case, with a view to ascertaining what position he occupied in reference to the testimony."

In another Texas case, *Ex parte Kemper* (Tex. Cr. App.), 216 S. W., 172, the relator approached the brother-in-law of a juror and offered money to be given to the juror, if he would hold out for acquittal in certain cases. The matter was never communicated to the juror. Said the court:

> "In our opinion, when the alleged contempt is an attempt to interfere with the jurisdiction or processes of the court and the same has never reached the point of any kind or color of communication or contact between the corruptive effort and the officers, processes, or matters sought to be interfered with, the power of contempt is lacking."

There was a similar situation in the case of *In re Ellison*, 256 Mo., 378; 165 S. W., 987, where Ellison approached one Highsmith and endeavored to reach a juror through Highsmith, or have Highsmith do what he could with a juror to aid the plaintiff in a case on trial in which the juror was sitting. In reversing the ruling of the lower court holding Ellison guilty of contempt, the Supreme Court of Missouri said:

> "I have failed to find a single case where the court has punished a person, as in this case, where he in no manner approached, discussed, or offered to bribe the juror or officer in person. In other words, the courts seem to attach to the words, 'to attempt to influence a juror' the meaning that the contemnor or his representative must approach the juror in person before the contempt is completed."

See also the case of *Coons vs. State*, 134 N. E., 194, where the Indiana court held that whether a contempt had been committed did not depend on the alleged intention of the offender, but on his act; and the case of *Kneisel vs. Ursus Motor Co.*, 316 Ill., 336; 147 N. E., 243, where the court held that the act of an offender

and not the alleged intent determines whether a direct contempt has been committed.

Viewed in the light of the foregoing cases, it is obvious that even if the Government should have proved a criminal conspiracy on the part of these respondents corruptly to influence or to intimidate the jury in the Fall-Sinclair case, such a conspiracy alone could not constitute contempt of court. The alleged conspiracy could not be contempt as the offense is defined in the Federal Courts, regardless of what overt acts might have been committed in furtherance thereof, unless some of the acts, in themselves, disconnected from any question of intent, had the effect of obstructing or a tendency to obstruct the administration of justice in the case of United States ex. Fall and Sinclair. Such a conspiracy has, of course, not been shown. Nor is there any evidence in the case that tends to show any intention whatever on the part of any of the respondents to do any act which was not their legal and moral right to do. But had such intention been found to exist, the Government would have been compelled to go very much further to establish contempt. It would have had to have shown by the evidence, and shown beyond all reasonable doubt, that these respondents, or some of them, did some act or acts, or authorized to be done for them some act or acts which in and by themselves and disconnected from any alleged improper intent, tended to obstruct the administration of justice in the Fall-Sinclair case. The question of criminal intent must be eliminated. Even if it were assumed to have been present, it could

not be considered in determining whether or not a contempt of court had actually been committed.

(6) Whether or Not an Act Constitutes Contempt of Court is Determined by the "Reasonable Tendencies of the Act" to Obstruct the Administration of Justice.

At the trial below both the Government and the respondents relied upon the case of *Toledo Newspaper Company vs. United States*, 247 U. S., 402; 62 L. Ed., 1187, decided by this court. The facts in that case, briefly stated, are as follows: The Toledo Railway & Light Company, operating street railways in the city of Toledo, Ohio, entered into negotiations with the city for the renewal of its franchise which was about to expire. In November, 1913, the city, without giving any new franchise or making any contract with the traction company, passed an ordinance which provided that on or after March 7, 1914, three-cent fares should be charged from day to day. In January, 1914, creditors of the company filed a bill in the Federal court to enjoin the carrying out of the ordinance on the ground that to do so would confiscate the property, in which the creditors had certain rights. In March of the same year a supplemental bill was filed, making the city a party to the suit, and asking for premilinary and permanent injunctions against the city. The company also filed its bill against the city seeking to restrain the enforcement of the ordinance both by preliminary and permanent injunctions. The matter became one of considerable public interest, and the people

of Toledo were vehement in their opposition to the suits which had been filed by the Railway Company and its creditors. The *Toledo News-Bee*, a newspaper with a circulation of more than 50,000 copies daily throughout the city, was particularly hostile to the Railway Company, and especially to anyone who defended the position taken by the company and its creditors. The matter of the preliminary injunctions came on for hearing before District Judge Killits. While the motions were pending, certain mass meetings were held and the *News-Bee* published accounts of these mass meetings and clearly indicated in its columns that Judge Killits was unfair. Scurrilous attacks were made by the newspaper upon Judge Killits, and several days later the newspaper published an editorial vigorously criticizing the Judge. This continued for some months. The paper even went so far as to advocate the disregarding of the injunction if granted. As a result of the publication, the newspaper company and its editor were tried and adjudged guilty of contempt of court. The case finally reached this court, and in discussing the law of the case, Mr. Chief Justice White, among other things, said:

> "The test, therefore, is the character of the act done and its *direct* tendency to prevent and obstruct the discharge of judicial duty." (Italics ours.)

The Government in the trial below apparently placed considerable reliance on the this court's opinion relating to the third contention of the appellants in the Toledo case. This court said:

"And thus we come to the third and final subject, which is:

"3. The contention that there was no evidence whatever to justify attributing to the publications the consequence of obstruction and therefore no legal basis for the conclusion of guilt and resulting right to impose penalties."

The court continues:

"It is to be observed that our power in disposing of this objection is not to test divergent contentions as to the weight of the evidence, but simply to consider the legal question whether the evidentiary facts found had any reasonable tendency to sustain the general conclusions of fact based upon them by the courts below. Considering the subject in this aspect again we are constrained to say that the contention *on the face of the record is too plainly devoid of merit to require any detailed review*. Indeed, we are of opinion that the court below was right in saying, concerning the ultimate conclusions of fact upon which its action was based, that it was *'difficult to see how any other findings could have been made.'*" (Italics ours.)

Here this court had in mind the record in the case below reported as *United States vs. Toledo Newspaper Company*, 220 Fed., 458, 461 wherein, in the opinion of Judge Killits, the one against whom the attacks were made, it is recited:

"It is admitted that the paper in question containing these publications circulated to the extent of more than 50,000 copies daily in and

> about the city of Toledo, wherein sat the court in question and resided the judge thereof subject to comment in said publications. *The order directing the district attorney to file the information and signed by the judge of the court recites the fact of his residence in the city of Toledo, and that, as a daily reader of the newspaper in question, the several publications had come to his personal attention.*" (Italics ours.)

Here was evidence and the only evidence necessary to show that the publications were seen by the presiding judge. The judge could not testify before himself. He was the trier of the contempt proceeding and at the same time the object of the attacks made by the contemners in their attempt to obstruct the administration of justice. It was not necessary, and it would have been absurd, for him to have taken the witness stand. He knew that he had seen the publication. There was no testimony to the contrary.

This court, then further commenting on the contention that there was no evidence to show that the publication had come to the attention of the judge, continued:

> "True, it is urged that although the matters which were made the basis of the findings were published at the place where the proceedings were pending and under the circumstances which we have stated, in a daily paper having a large circulation, as it was not shown that they had been seen by the presiding judge or had been circulated in the court room, they did and could form no basis for an inference of guilt."

The District attorney contended below, and no doubt will contend in his brief and argument before this court, that what this court said, in that portion of the opinion just quoted, was that it was true that there was no evidence to show that the presiding judge had seen the publication, whereas all this court said was that such was the contention. What the court meant is clearly seen from what follows in the opinion:

> "But the situation is controlled by the reasonable tendencies of the act and not by extreme and substantially impossible asumptions on the subject."

Certainly what the court meant by "extreme and substantially impossible assumptions" was an assumption that the judge did not see the publication. This court was right in saying that it was an extreme and substantially impossible assumption that Judge Killits did not see the publication. His resumé of the case shows that he did see them. His opinion in 220 Fed., 458 to 516, clearly shows that Judge Killits was subjected to probably the most vicious and scurrilous attack to which any judge, Federal or State, has ever been subjected, and this court is, of course, familiar with that opinion, which is too voluminous to quote in its entirety. We think it pertinent, however, to mention some of the acts committed by the Newspaper Company and its editor. The Railway Company was called the "Big Con." On March 24, 1915, appeared the following statement: "That Henry L. Doherty is directing operations, the Big Con got busy early on Tuesday

in its efforts to evade the provisions of the Schreiber 3 cent fare ordinance." In a cartoon in the same paper the traction company was represented as being "In the Last Ditch," and the editor admitted that the "last ditch" was intended to mean the court. On March 25, 1915, the day before the hearing, a cartoon appeared on the front page of the paper entitled "A Desperate Case," representing the "Big Con" as a very corpulent person in bed very ill, with his attorneys and Mr. Doherty around him in great anxiety, one of them exclaiming that "We'd had better call in Doc. Killits." In the same article there was a news item head in big type across five columns "Car Riders May Ignore Order Barring Low Fare." Another subheading in the form of a "tabloid" paragraph was "Mass Meeting of Municipal Ownership League at Memorial Hall, to be held Friday night. Plan laid that Memorial Hall crowd shall remain in session until midnight, then swarm on cars and refuse to pay more than three cents."

Another article detailing the plan reads:

> "It has been planned, *restraining order or no restraining order by the federal court*, to test the strength of the three-cent fare all-day ordinance immediately following the closing of the meeting of the Municipal Ownership League in Memorial Hall on Friday night, unless, before that time, other counsel prevails. The Schreiber ordinance will become effective at midnight on Friday, or 12:01 a. m. on Saturday. That's the night the Municipal Ownership League is to hold its first meeting. It is planned to hold the

crowd until midnight. Then the crowd is expected to offer three-cent fares on all the lines radiating from Memorial Hall, and refuse to pay more."

And further:

"It is intimated that at the meeting of the Central Labor Union of Thursday night resolutions will be approved calling on all labor union men to attend the mass meeting on Friday night. These men *may furnish the sinew to see to it that three-cent fares are accepted by the conductors* after the new ordinance becomes effective."

And on the editorial page was found the following:

"And now the railway crowd has taken the franchise into the United States court. That means, practically, that the rights of the people of Toledo will be placed in the hands of a two-legged human being who happens to be a federal judge.

"Just what kind of a judge this particular judge may be, and just what kind of a two-legged human being he is, we don't know. But the fact that he is a judge, and a federal judge at that, doesn't make him any more or less of a man than he was before he went on the bench.

"So the people's rights here will depend largely upon how his mind works, and whether he thinks in straight lines or around corners. Anyhow, whether he is a great big man or a little bit of a man, he will have a whole lot to say in finally determining the argument between the people of Toledo and the bond and stock gamblers and speculators."

The attacks continued from time to time, and finally on September 11th the following appeared in the paper:

> "*Killits Accuses John Quinlivan of Contempt. Basis of Charges Against Union Leader.*
>
> "These are the remarks alleged to have been made by John Quinlivan, and on which Judge Killits bases his contempt charge.
>
> "The street car situation of Toledo is in the hands of a friend of the Rail-Light.
>
> "Judge Killits has demonstrated from the first that he was at all times favorable to the Rail-Light.
>
> "Any fair-minded citizen will see that when Killits placed the burden of proof of the Schreiber ordinance on the city that the city was going to be the goat. The Central Labor Union should adopt stinging resolutions and let our federal friend know what we think of him.
>
> "The burden of proof should have been placed on the Rail-Light. Killits and the press are preparing to hand the people a lemon. They are unfair to the people.
>
> "Impeach Killits."

And finally on September 17th the newspaper had this to say respecting Judge Killits:

> "*The News-Bee and Judge Killits.*
>
> "As we see it the public interest in the contempt proceedings instituted by Judge J. M. Killits against the News-Bee and Managing Editor Howard, depends not so much on what the judge sees fit to do or not do, as it does upon

how his actions may affect the policy of the News-Bee.

"It has been the policy of this paper in the past to discuss frankly and fearlessly all questions of public policy and interest. And without regard to whether our statement of the truth, as we see it, pleases or displeases this, that or the other citizen—even though that citizen happens to be what is commonly known as a judge.

"We have no desire to influence the conduct of any judge in interpreting the law in any particular case. And we have no intention of permitting any judge of any court to influence our judgment in defending the public interest.

"We don't want to censor judicial decisions, and will not permit judicial censorship of the News-Bee's editorial policy.

"We have notions of our own about contempt of court. One of them is that nobody but the judge himself can inspire public contempt of the court over which he happens to preside.

"The people of this country, because of patriotic education from early youth, start out with respect for our federal courts. When that respect changes to contempt, it can be only because of the conduct of a judge or judges.

"We have said before that after all, Judge Killits is no more than a two-legged man like any of the rest of us. We repeat it for the sake of emphasis. No judge judges by divine right even though he holds his job for life.

"No judge is infallible or omnipotent. No physical or mental change takes place when he is lifted from the practice of law and placed upon the bench, that transforms him from a human being into a god.

> "And what kind of a judge he turns out to be depends almost altogether on the kind of a man he was beforehand.
>
> "We shall not discuss now the merits of this particular case. We do not discuss cases while they are pending with any purpose of interfering with the administration of justice.
>
> "We prefer to give every judge free rein to make either a Solomon or monkey of himself, if either be possible.
>
> "But once the case is decided, we shall say and publish whatever we think best for the public good, whether it pleases or displeases any judge—even if that judge happen to be John M. Killits."

This court then referred to another contention of the appellants in the Toledo case that there was no proof that Judge Killits was influenced in his purpose to do his duty. This court answered that contention as follows:

> "Again it is said there is no proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by the publication, and therefore there was no proof tending to show the wrong complained of. But here again, not the influence upon the mind of the particular judge is the criterion, but the reasonable tendency of the acts done to influence or bring about the baleful result is the test."

It is, of course, freely admitted by this appellant that if it had been proven that any one of the operatives of the Burns Agency or anyone else acting on behalf

of the defendants in the criminal case, or, in fact, any person made contact with any of the jurors or approached them in any way, or sought to influence them in their duty, that such act would amount to contempt of court, even though the juror approached would be strong enough to resist any temptation or a suggestion which might have been made by such person to him. This rule of law has been announced time and time again by the Court of Appeals of the District of Columbia and lately in the Lombardo case, *supra*. We have no such situation here.

If in their admitted shadowing of the jurors in the Fall Sinclair case the appellants had intimidated any of the jurors or had attempted to bribe or to influence them by threats in their decision of the issues in that case, admittedly the acts would have constituted contempt. It was so held in the case of *McCaully vs. United States*, 25 App. D. C., 404, where the defendant was adjudged guilty of contempt for going to a juror's house, and later getting the juror to call at his place of business in order to talk with him about the case, and to try to influence him to decide it in favor of the defendant. Similarly in *Pierce vs. United States*, reported in 37 App. D. C., 582, Pierce was declared in contempt for approaching a member of the grand jury and attempting to corruptly influence his action in a case then pending before the grand jury. And the same was held in the recent Lombardo case in the Court of Appeals of the District of Columbia. Of like import is the case of *Russell vs. United States*, 255 U. S., 138; 65 L. Ed., 553, where the de-

fendant actually attempted to bribe a juror, the offer to bribe being delivered to the juror's wife. It is important to note, however, that in every one of the cases reported in the Federal courts where persons have been held guilty of contempt for attempting improperly to influence or intimidate jurors, direct contact had been made with the jurors and a direct attempt made to influence them.

See also

Savin vs. United States, 131 U. S., 150.
Cuddy vs. United States, 131 U. S., 154.

But the line of demarcation is plain between the cases cited above, where the juror or the subject knows that he is being approached, and those cases where an attempt is made, but where there has been no direct contact with the juror, for instance: In *Carroll vs. United States, supra*, it was held that an attempt to influence a juror which only reached a third person, who refused to communicate the attempt to the juror, did not constitute contempt; and in *Domphan vs. Lehman, supra*, that conspiracy to commit contempt is not contempt. Somewhat analogous is the case of *People vs. Weiler*, 179 N. Y., 46; 71 N. E., 462, where the defendant, a private detective, shadowed the complainant for four or five days, but in such a manner that the complainant did not know it at the time. The detective was charged with having committed a crime under a statute making an "offensive or disorderly act" a misdemeanor and punishable as such. But the court held that under this evidence there had been no

offensive or disorderly act, and that there had not been any damage sustained by the person shadowed, even though he suffered a natural feeling of annoyance after being informed by others that the shadowing had taken place. And in *Chappell vs. Stewart*, 82 Md., 323, the court refused to grant an injunction to restrain shadowing by a detective employed for that purpose. Similarly in *People vs. Clark*, 164 N. Y. S., 137, which was an action against a detective agency for shadowing, the court said:

> "Being shadowed by a private detective is certainly annoying, but if the courts are to hold that it is illegal, the Legislature must pass a law *to that effect.*"

Not only must it be shown that contact was had with one of the jurors, but there must have been an attempt also to corrupt or influence the juror—some indication of how the party approaching the juror desired the case to be decided; and we submit, that even had it been shown that any one of the jurors were conscious of the surveillance (of which fact, however, there is not the slightest evidence), there could be no contempt of court, unless the juror knew who it was that was shadowing him, or at least what was desired of him, and so forth; in other words, there must have been some attempt to corrupt or influence him. Suppose a person approaches a juror in a case and goes so far as to say "I am interested in the case. How is it progressing?" This has been held not to constitute contempt of court. In the case of *Castleman vs. Conti-*

nental Car Co. (Ky.), 238 S. W., 658, the defendants employed a detective agency to assist in the selection of a jury to try the case, and one Hager, head of that agency, not only assisted in the selection of jury, but attended the trial and conversed with one of the jurors during the trial. It was admitted by him that he did make inquiry of one of the jurors as to whether the case had been decided by the jury, but, upon being informed that it was not, ceased his conversation and made no further reference to the case. Upon the review of the case on appeal, the Appellate Court said:

> "The facts disclosed by the record concerning this matter are not sufficient to justify the positive conclusion that any improper conduct was engaged in by Hager or any one connected with his detective agency though the evidence proves some opportunities therefor. However, it is proper to state that there is absolutely no fact appearing in the record remotely or otherwise connecting defendant's counsel with any misconduct of the detective agency, if any."

See also:

Harwell vs. State, 78 Tenn., 544.

Ex parte Wright, 64 Tex. Cr. Rep., 171.

Judged by the principles which determine the question of liability for contempt in the Federal courts, it is plainly evident that if no juror in the Fall-Sinclair case actually knew that he was being shadowed by any agent or employee of the appellants, or any of them, and his vote as a juror was not being solicited in be-

half of such appellant or appellants or their principal, the act of shadowing could not possibly have any effect, directly or indirectly, upon that juror's conduct or upon the orderly administration of justice.

But even if it be assumed (for purposes of this argument alone) that the motives of the appellants were improper and that they or their employees hoped to use the information which was, or might have been, obtained in the "shadowing" for the purpose of improperly influencing some member of the jury, the appellants, while guilty perhaps of a *conspiracy* to obstruct justice, could not by any possible stretch of the imagination be said to have committed an act *tending* to obstruct justice. They would have done no more than if they had simply sat in the court room during the Fall-Sinclair trial and looked at the jurymen, hoping to discern from a study of their faces whether any of them would be good subjects for an attempt to bribe. A juror who is unaware that he is being shadowed, or that he was wanted to help one side or the other, cannot possibly have his actions influenced by the shadowing, and the orderly administration of justice cannot be in the least degree obstructed thereby. The act of shadowing, then, cannot be an act of contempt of court within the meaning of Section 725 of the United States Revised Statutes, unless the jurors, or some of them, knew of the act and of the specific purpose of it.

No single juror testified that he knew he was being shadowed, or that he even suspected that he was being

shadowed by agents or employees of the appellant. The Burns operatives themselves, called to the stand one after the other to testify on this subject, declared that they had received explicit instructions from their employers not to approach any juror or to let any juror know that he was being shadowed. The Burns Detective Agency so conducted the operation as to exclude any possibility of any disclosure of the investigation being made to the subjects. Operatives were changed at frequent intervals in order that the jurors might not become suspicious at having seen the same face too frequently. At the risk of losing their subjects, which frequently happened, the operatives were instructed to, and did keep a substantial distance away. The entire operation was carried out in such a manner that not one of the twelve men and women who sat on the Fall-Sinclair jury testified that he or she knew or apprehended any shadowing which might or could have affected them in any way in their duties as jurors. If, then, the acts of surveillance which the Burns agents performed in this case were so conducted that no one of the eleven jurors who were shadowed knew the shadowing was taking place, the fact that these acts did not reach the minds of any single juror is the best possible proof that such acts did not reasonably tend to reach their minds. In no single instance did it operate in part to obstruct justice or to reach the consciousness of the person shadowed.

Point III.

The Trial Court Erred in Admitting Evidence of the Operatives' Reports.

The law being as shown in the preceding sections of our argument, it follows necessarily that the trial court erred in admitting in evidence the original and carbon copies of the reports of the Burns operatives. These reports were sent to the appellant Day and to this appellant. They went no further. Neither members of the jury nor the court saw them. No juror knew of their existence. In no way did they even indirectly tend to obstruct the administration of justice. The trial court likewise erred in admitting evidence concerning the alleged falsity, incorrectness or inaccuracies of these reports. That is a matter that concerned only the respondents and the operatives. Of like import was the refusal to strike out the O'Reilly report of October 29, 1927 (Government's Exhibit 170), concerning juror Kern. That report was never sent to nor seen by this appellant. Nor was it made under his instructions or with his knowledge. In fact, those who made it realized that it was without the scope of their instructions. When these reports were offered no promise was made to follow it up with proof that the jurors or any of them knew of these reports or their contents, or of the purpose in mind in the shadowing, nor was any such proof thereafterwards attempted.

Point IV.

The Trial Court Erred in Not Admitting Testimony as to the Intent of This Appellant.

It is only because the trial judge in his opinion spoke of "sinister" intent of this appellant and the others that error is claimed in the refusal to admit testimony that W. Sherman Burns did not, when he sent C. G. Ruddy to the respondent, H. M. Day, intend to turn the Burns Agency over to Day for him to do with it as he pleased. Counsel contended then and contend now that intent in contempt cases is of no import, but as the court below considered it, it is respectfully submitted that this appellant should have been allowed to introduce testimony showing there was no improper intent.

If shadowing of a jury is *per se* contempt of court, then this appellant, W. Sherman Burns, admits his liability; but under no other theory can he possibly be guilty of contempt of court. He happened to be the officer of the Burns Agency who contracted with Mr. Day and his principal, Mr. Sinclair, concerning the surveillance. His instructions were definite and the scope of the work was positively limited by him to pure surveillance. Moreover, he took every precaution to see to it that his understanding as to the nature and the extent of the work was correct. This is evidenced by his insistence that Ruddy call him on the telephone after Ruddy had had his first discussion with Mr. Day about the surveillance. From that time until the

termination of the surveillance he had nothing whatever to do with it. He saw no reports of any of the operatives and the only matters that came to his attention during the whole time were purely formal business matters affecting the expenses of the work in the nature of reports of expenses sent to the office from time to time by Mr. Ruddy. He had nothing whatever to do with the making of the affidavit—in fact, did not know of its existence until after it was executed and filed with the Clerk of the Court by Mr. Justice Siddons. It was freely admitted by the District Attorney conducting the contempt proceeding that this defendant cooperated with him in every way to bring before the court and the Grand Jury investigating the matter all of the facts and documents within this appellant's knowledge and control.

When this defendant accepted the employment on behalf of the Burns Agency—as an officer only of that corporation—there were no decisions of any court, nor any ruling of any governmental agency or department that would induce him to believe for a moment that the surveillance of a jury was unlawful. Indeed, as we have herein elsewhere shown, the practice of the Department of Justice, well known to this appellant, would prompt him to believe that such surveillance was proper.

The trial justice did not find as a fact that any of the jurors were approached by the operatives or were conscious that they were being shadowed. The Court of Appeals in the certification in this case says, "The evidence does not disclose that any of the operatives were instructed to approach, or approached, the jurors,

nor does it disclose that any juror knew that he was being shadowed."

The record amply supports the foregoing finding of fact by the Court of Appeals concerning the effect of the surveillance on the members of the jury; and the Government's contention made at the trial below and in the Court of Appeals that the jurors were aware of the surveillance, is without any basis of fact. But even if the jury were approached, which we do not for a moment admit, and even if the construction which the Government seeks to put upon the visit of O'Reilly to Kidwell's house and the investigation of Kearn's financial responsibility is proper, with which construction we most certainly disagree, nevertheless, this appellant should not, we submit, be held accountable for such acts of the operatives and servants of the Burns' Agency for the reason that such acts were not only beyond the scope of their employment, but in the very face of the instructions and directions given in good faith by this appellant.

It can not be said that the mere surveillance of a juror which does not contemplate in the slightest any contact with, or consciousness on the part of, the juror, is an unlawful thing—is a criminal act. In the many thousands of decisions of the courts of the United States and England, touching on every variety of acts of conduct, there is not one that condemns, in terms, the surveillance of a jury. In no order issued by governmental authority in this country or England is there to be found a prohibition of shadowing jurors. So it must be conceded that when this appellant, acting as an officer of the Burns Agency, directed this surveil-

lance to begin, and threw around it all the safeguards with which it was possible for him to protect it, he was entering, in his official capacity, into a lawful enterprise and the thing he directed the servants of the Burns Agency to do was a lawful thing and not a crime or offense against any law of the United States.

It is not proper, we submit, to apply to the conduct of this appellant, the doctrine of *respondeat superior*, as if this were a civil case.

It is freely conceded that there is respectable authority to the effect that, in respect to the so-called illicit liquor traffic and similar cases, such as, for instance, those involving the sale of liquor to minors and on Sunday in violation of enactments passed many years ago under the compulsion of the early movement towards prohibition, the master is held liable for the wrongful act of the servant, notwithstanding such act was not only done without the master's knowledge and consent, but against his directions. The great evils which such statutes sought to correct forced the harsh rule that applied the doctrine of *respondeat superior* to such cases. As was very aptly observed in *O'Donnell* vs. *Commonwealth*, 108 Va., 882, the doctrine was based upon the postulate that a man who engages in that sort of business as a licensee of the State does so at his peril and must see to it that his servant rigidly complies with the requirements of the law. From these decisions has been developed the principle that with respect to offenses *mala prohibita*, as distinguished from those *mala in se*, the doctrine of *respondeat superior* applies as in civil cases. By no means, however, have all the courts followed this rule, even in the illicit

liquor traffic, gambling and pure food cases. The following are a few of the many cases in which the applicability of the doctrine was denied:

Neideser vs. State, 6 Baxt., 499;
State vs. Mueller, 38 Minn., 497;
Lathrope vs. State, 5 Ind., 192;
Minden vs. Silverstein, 36 La. Ann., 916;
Commonwealth vs. Stevens, 153 Mass., 421;
Commonwealth vs. Wachendorf, 141 Mass., 270;
State vs. Neal, 133 N. C., 689;
Anderson vs. State, 22 Ohio State, 305;
Commonwealth vs. Johnston, 2 Pa. Sup. Ct., 317;
Wadsworth vs. State, 351 Tex. Crim. Rep., 584;
Commonwealth vs. Nichols, 10 Met., 259;
Commonwealth vs. Dunbar, 9 Gray, 298;
Commonwealth vs. Riley, 196 Mass., 60;
Kittrell vs. State, 89 Miss., 666;
Rosenbaum vs. State, 24 Ind. App., 510;
Bean vs. State, 72 Ark., 368;
Hanson vs. State, 43 Ind., 550;
Thompson vs. State, 45 Ind., 495;
Commonwealth vs. Rooks, 150 Mass., 59;
Patterson vs. State, 21 Ala., 571;
Boatwright vs. State, 77 Ga., 717;
Gaiocchio vs. State, 9 Tex. App., 387;
State vs. Burke, 15 R. I., 324;
Wetzler vs. State, 18 Ind, 35;
Pennybaker vs. State, 2 Blackf., 484;
State vs. Baker, 71 Mo., 475;
State vs. Meagher, 49 Mo. App., 571;
People vs. Utter, 44 Barb., 170;
Hipp vs. State, 5 Blackf., 149.

Nor has the rule found universal application in England. Lord Coleridge in *Somerset vs. Hart*, L. R., 12 Q. B., Div. 360, gives a reason for the rule and the limits of its application as follows:

> "I quite agree that the provisions of an act which is passed in the interest of public morality and order should receive a reasonably liberal construction. I do not say that proof of actual knowledge on the part of the landlord is necessary. Slight evidence might be sufficient to satisfy the magistrates that the landlord might have known what was taking place if he had pleased, but where no actual knowledge is shown, there must, as it seems to me, be something to show either that the gaming took place with the knowledge of some person clothed with the landlord's authority, or that there was something like connivance on his part that he might have known, but purposely abstained from knowing."

And to the same effect is *Chisolm vs. Doulton*, L. R., 22 Q. B., Div. 736.

While criminal contempt of court is *sui generis* and can neither be called *malum in se* nor *malum prohibitum*, there is manifestly more reason in applying to it the same rule as applied to offenses which are *mala in se*. On principle, we submit that it is better logic to follow in this case the rule that the master is not liable for the wrongful acts of the servant, where the servant is engaged in a lawful enterprise, or where he is not employed by the master in an unlawful undertaking, but where he departs from the master's

instructions, and without the master's knowledge and consent, commits wrongful acts.

Certainly, criminal contempt of court is not *malum prohibitum*. It is not an offense created by any statute. What enactments there are concerning criminal contempt are merely declaratory of the existing law, as was said by Chief Justice White in *Toledo Newspaper Company vs. United States*, 247 U. S., 407; 62 L. Ed., 1181.

The Court of Appeals of the District of Columbia in *Re Gompers*, 40 App. D. C., 293, 322, said: "Contempt of Court is not a statutory crime in this country." While the opinion of the Court of Appeals in that case was reversed by the Supreme Court in *Gompers vs. United States*, 233 U. S., 604, 610, 611, it was not reversed in so far as the Court of Appeals of the District of Columbia declared that contempt of court was not a statutory offense. Indeed, the opinion of the Supreme Court fortifies and strengthens the opinion of the Court of Appeals in that regard and goes further when it says:

> "It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statutes, offenses, because trial by jury as it has been gradually worked out and thought out, has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be

proved that in the early law they were punished only by the usual criminal procedure, 3 Transactions of the Royal Historical Society, N. S. p. 147 (1885), and that, at least in England, it seems that they still may be and preferably are tried in that way."

We feel that we should close this particular phase of our discussion, as we began it, with the statement that after all, there is not the slightest evidence in the entire record that any juror was ever approached by any one connected with the appellants or that any members of the jury were ever conscience of ever being shadowed.

POINT V.

The Trial Court Erred in Admitting Evidence of Things Done After the Mistrial of the Fall-Sinclair Criminal Case and When There was no Cause on Trial Before the Court.

It has been clearly shown that there can be no act of contempt of the character of that with which this appellant is charged, unless there is a cause on trial in court. Therefore, it is clear that the trial court erred in admitting in evidence things said and done by, and the conduct of this appellant after the discharge of the jury.

POINT VI.

The Trial Court Erred in Not Admitting Evidence that there was no Consciousness of the Surveillance in the Mind of Any Juror.

The Government used every conceivable effort to prove consciousness of the surveillance on the part of

some of the jurors. The Government failed utterly to prove it, although the court gave the Government every latitude in its attempt. Notwithstanding, the trial court refused to admit evidence on behalf of appellants that immediately subsequent to the dismissal of the jury in the Fall-Sinclair trial all the jurors therein had stated one to the other and agreed among themselves that at no time during the Fall-Sinclair criminal trial were they conscious of being shadowed or followed. This was error most prejudicial to this appellant.

POINT VII.

The Trial Court Erred in Admitting Evidence of Acts of Persons Not Shown to be Connected With any of the Appellants or With Those Acting in Their Behalf.

It is submitted that the trial court erred in admitting evidence concerning the suspicion of juror Herzog that during the Fall-Sinclair trial he was on one occasion followed by some one, and the testimony of juror Bailey to the effect that on one occasion on October 28, 1927, during the Fall-Sinclair trial, she was observed by some unknown person, and in admitting the testimony of juror Kidwell concerning an incident in the Museum Grounds and an incident at the west end of the Court House, both alleged to have taken place during the Fall-Sinclair trial, for the reason that none of the appellants, nor any one in their behalf, were shown to have known about such incidents or had anything to do with them.

For like reason, the court erred in admitting testimony of a conversation in the petit jury room between jurors Heaton, Bailey and Kidwell during the Fall-Sinclair trial (Rec. 491). The error of the court in view of the argument now made by the Government is all the more apparent. The Assistant District Attorney in the trial below adduced evidence over the objections of the appellants to the effect merely that a conversation took place between several of the jurors in the jury room on the "subject of being watched or being shadowed." An examination of the Record will show that he was extremely careful in having the witnesses testifying about this particular matter limit their testimony merely to the fact that there was such a conversation. He was careful to ask none of the witnesses what was said and it is a conclusion from which there is no escape that had the conversation been to the effect that the jurors thought they were being shadowed or watched by some person or persons, the Assistant District Attorney would have been certain to have brought out that fact. And it follows necessarily that the conversation was not to the effect that the jurors thought they were being shadowed. Exactly what was said no one knows except the District Attorney. It might have been that the jurors stated they did not think they were being shadowed or they may have speculated about being shadowed by the Government. The conversation may have taken any turn wherein the subject could have been one of surveillance or shadowing. Indeed the conversation might have been prompted by the occurrence at the west end of the court house when an unidentified man (in nowise

connected with the appellants and who might innocently have been asking about the trial) approached Kidwell. The evidence should not have been admitted; and at any rate it does not in the slightest show that the surveillance as conducted by the Burns Agency penetrated the consciousness of any of the jurors.

The testimony of Britten Browne, Robert Dove, Mrs. Rawzee, Carl S. Anderson and Donald Woodward concerning an investigation of the property of juror Kern showed distinctly that it was an independent investigation, unknown to the Burns Agency, or any of its agents or employees. For that reason it is submitted that it was error to refuse to grant the motion to strike out this testimony as to the Burns respondents.

Point VIII.

The Trial Court Erred in Limiting the Cross-examination of Frank J. O'Reilly, a Government Witness.

Counsel contend that the trial court erred in refusing to admit testimony on cross-examination of Frank J. O'Reilly, one of the Burns operatives, of what was actually said between O'Reilly and the father and mother of juror Kidwell, on the occasion of the visit of O'Reilly to the barber shop of the elder Kidwell; and to the home of the mother on the grounds that the subject of the conversation was opened up by the direct examination (Rec. 416, 428).

Point IX.

There Was No Contempt of Court Committed by This Appellant with Respect to the Preparation and Filing of the McMullin Affidavit.

In the first place, it is clear from the evidence that this appellant had nothing to do with the preparation and filing of the so-called McMullin affidavit. In the routine of business he returned the report made by McMullin concerning the actions of juror Glasscock, and upon which the affidavit was based, but there is no evidence that he knew why the report was desired. Indeed, all the evidence is to the contrary. He did not know of the preparation and filing until after Justice Siddons, himself, had filed it in the papers of the case. Then again he had every reason to believe the report of McMullin was true. There is nothing in the Record to contradict this. The trial Justice in his opinion places no blame upon this appellant for preparation and filing of the affidavit, but limits his condemnation to the appellant's father, W. J. Burns. Again it must be remembered that the trial justice himself filed the affidavit, and admitted that he had done so (Rec. 1, Addition).

But even if it could be said, by the wildest stretch of the imagination, that this appellant played some substantial part in the preparation and filing of the affidavit, knowing it to be false, nevertheless he could not legally, for such conduct, be adjudged guilty of contempt of court.

(1) The Falsity of the Affidavit Did Not Make Its Filing Contempt of Court.

The question as to whether or not the crime of perjury is also contempt of court was one in which there was for many years much confusion. Some courts held that perjury *per se* was contempt, while others took the contrary view. It remained for Chief Justice White, in delivering the opinion of this court in the case of *Ex parte Hudgins*, 249 U. S., 378; 63 L. Ed., 656, to state the law on this subject in such clear and unmistakable terms that all misunderstanding has been removed. The petitioner in that case sought by writ of *habeas corpus* to be discharged from a commitment for contempt for perjury alleged to have been committed in open court. He had been called as a witness for the purpose of proving the handwriting of one McMillan. Upon being shown a writing the witness testified he believed it to be the writing of McMillan as he had often seen his writing. Upon repeated prodding by the court, however, he refused to testify as to whether or not he had even seen McMillan in the act of writing, stating "I would not say I have not, but I would not say that I have." The court thereupon committed him for contempt, declaring that it was satisfied from his previous testimony that he was swearing falsely.

This court granted the writ of *habeas corpus* and declared that although the witness may have committed perjury, his conduct did not amount to contempt of court.

In delivering the opinion of this court, Chief Justice White declared that there was an "essential ingredient in addition to the elements constituting perjury under the general law which must be found in perjury when committed in the presence of a court to bring about the exceptional conditions justifying punishment" for contempt. This essential ingredient, declared the court, is "the further element of obstruction to the court in the performance of its duty."

The following paragraph from the court's opinion contains a clear analysis of the distinction between perjury as a crime, and perjury constituting contempt of court:

> "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case when the power to punish for contempt is exerted—a principle which, applied to the subject in hand, exacts that in order to punish perjury in the presence of the court as a contempt, there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty. As illustrative of this, see United States *vs.* Appel, *supra*. It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. But the mistake is, we think, evident, since it either

> overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing. If the conception were true, it would follow that when a court entertained the opinion that a witness was testifying untruthfully, the power would result to impose a punishment for contempt, with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful, and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen, when called as a witness in a court, would be gravely imperiled."

Analyzed in the light of this authoritative declaration from this court, it is clear that the mere falsity of the McMullin affidavit did not make its filing a contempt of court. Even though the respondents had wilfully caused the false affidavit to be filed, knowing it to be false, there must have been some obstruction to the court in the performance of its duty before the act could constitute a contempt.

(2) The Filing and Publication of the Affidavit did not Constitute Contempt.

In the case of *Doniphan vs. Lehman, supra*, in which it will be remembered that Doniphan and Lehman were charged with contempt of court for having conspired to bring about a miscarriage of justice in a civil action to which they were parties, the respondent Doniphan, in furtherance of their conspiracy, had caused an im-

proper deposition to be taken for use in the case. This deposition was sent by mail to the clerk of the court who received it and filed it for use in the trial of the cause. After it was filed the deposition was published. It was never in fact actually used at the trial of the cause, as the conspiracy was discovered before the trial took place. The court, however, declared that neither the filing nor the publication of this deposition constituted contempt of court, inasmuch as it did not actually tend, in that case, to obstruct the administration of justice. In its opinion the court said:

> "The taking of such a deposition is not misbehavior in or near the presence of the court, nor does its mere taking tend to obstruct the administration of justice. Something more must be done than merely to take a deposition in New York in order to obstruct the administration of justice here. The misbehavior must be a hindrance or obstruction of justice, and, so long as the deposition is not used or offered to be used in court, it cannot be regarded as an obstruction to the administration of justice. It may never be used or offered for use in court. The filing of it in the clerk's office and its publication after such filing cannot of themselves be held to be misbehavior in or so near the presence of the court as to obstruct the administration of justice. It cannot be regarded an obstruction to the administration of justice so long as it is neither used nor offered for use in or near the presence of the court."

Under the authority of this case the *filing* of the false McMullin affidavit could not *per se* make the re-

spondents guilty of contempt of court. The filing of the affidavit did not tend in any way to obstruct the administration of justice in the Fall-Sinclair trial. The affidavit never having been used, and no action having been taken by the court as a result of this affidavit, its filing in court could not constitute a contempt.

(3) Since There was Nothing Pending Before the Court, the Preparation, Submission, or Filing of the Affidavit Did not Amount to Contempt of Court.

The Government, in its brief before the Court of Appeals, contended and no doubt will contend in its argument before this court, that when the McMullin affidavit was filed there was a proceeding pending, to-wit, an investigation of the surveillance by the Grand Jury of the District of Columbia. Such a suggestion was made for the first time in the Court of Appeals. The position of the Government in this respect is untenable.

The petition alleges the employment of the surveillance "for the following objects, that is to say:

> "To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each or any of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause, and to influence, pervert, impede and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert, and prevent the due administration of justice in said court *in the trial of*

> *said criminal prosecution*, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants *therein*, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, *with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose*" (Rec. 3 and 4).

Concerning the making and procuring of the affidavit, the petition states "the said William J. Burns returned to the City of Washington, in said District of Columbia, where he and the said W. Sherman Burns, *in furtherance of said designs of said respondents*, procured the making of a false affidavit," etc. (Rec. 5).

Nowhere in the petition is there any charge that the affidavit in any way related to the Grand Jury proceeding. Moreover, it was not filed for use before the Grand Jury. It was not asked to be used in connection with the Grand Jury investigation, nor was any such use made of it, nor was that course even suggested.

If the alleged false affidavit has any bearing at all it must be related to the Criminal Proceeding and to that alone; and we proceed now to discuss its effect in that line.

In the case of *Craig vs. Hecht*, 263 U. S., 255; 68 L. Ed., 293, this court was asked to review the commitment for contempt of one Charles L. Craig, Comptroller of the City of New York. Mr. Craig had written

and published a letter to Public Service Commissioner Nixon, wherein he had assailed United States District Judge Mayer because the Judge, in certain receivership proceedings then pending, had refused to appoint a co-receiver for the City of New York to manage certain of the metropolitan street railways. It is to be noted that while the order of the court which Craig criticized had been a final one with respect to the matter there decided, the cause in which the order had been passed was still pending.

This court declined to review the conviction of Craig for contempt on the sole ground that a review had been improperly sought by *habeas corpus*, and should have been taken by writ of error. The merits of the charge of contempt were not discussed by Mr. Justice McReynolds, who delivered the opinion of the court. However, in a concurring opinion, Mr. Chief Justice Taft proceeded to discuss the fundamental question whether or not an act of contempt had been committed by Craig in writing and publishing the letter criticizing Judge Mayer. Judge Taft declared that inasmuch as the publication criticizing the Judge took place after the matter with which the criticism had to do had been finally adjudicated, the carrying out of the court's judgment could not be thereby obstructed and the publication was not contempt. The following quotation is taken from Judge Taft's concurring opinion:

> "It is of primary importance that the right freely to comment on and criticize the action, opinions and judgments of courts and judges should be preserved inviolate; but it is also essential that courts and judges should not be im-

peded in the conduct of judicial business by publications having the direct tendency and effect of obstructing the enforcement of their orders and judgments, or of impairing the justice and impartiality of verdicts.

If the publication criticizes the judge or court after the matter with which the criticism has to do has been finally adjudicated, and the proceedings are ended, so that the carrying of the court's judgment cannot be thereby obstructed, *the publication is not contempt and cannot be summarily punished by the court, however false, malicious, or unjust it may be.* The remedy of the judge as an individual is by action or prosecution for libel. If, however, the publication is intended and calculated to obstruct and embarrass the court in a pending proceeding in the matter of the rendition of an impartial verdict, or in the carrying out of its orders and judgment, the court may, and it is its duty to protect the administration of justice by punishment of the offender for contempt." (Italics ours.)

See also:

U. S. vs. Southern Wholesale Grocers Assn., 207 Fed., 434.

Cornish vs. United States, 299 Fed., 283.

Viewed in the light of the three cases cited above, it is obvious that nothing which the appellant is alleged to have done in the matter of the false McMullin affidavit could constitute contempt of court. As the time the affidavit was handed to the court a mistrial in the Fall-Sinclair case had taken place, and the jury had been finally discharged. There was no action what-

ever remaining for the court to take with respect to that case, except to fix the date for the new trial, and the affidavit, relating to alleged conduct of government agents in the prior trial, could not possibly be held to have any tendency to affect or obstruct the administration of justice. Indeed, nothing was asked to be done with or about it. The affidavit was of no more effect in obstructing the administration of justice than if it had been filed among the papers of some ancient and long forgotten cause.

It is submitted that the case of *Ex parte Steiner*, 202 Fed., 419, which held that a Federal court has power to punish for contempt the making of false affidavits to be used in opposition of a motion for a preliminary injunction, which affidavits, in the absence of anything to the contrary, would be presumed to have been verified in the presence of the court, does not apply to the case at bar. *There the false affidavit was presented to the court during the pendency of the cause for the purpose of influencing the action of the court and the court was asked to use the false affidavit to assist it in reaching its conclusion in that particular case which was then pending.* Such an act naturally obstructs the due administration of justice. It is obvious that the two cases are clearly distinguishable on their facts.

Point X.

In View of the Rulings and Findings of the Trial Justice, He Should Have Allowed the Introduction of Evidence Concerning the Practice and Custom of the Department of Justice of the United States of Shadowing Juries in Criminal Cases.

From the very beginning of the contempt proceeding it was apparent that the trial Justice was laboring under an erroneous impression of what constitutes the law of criminal contempt. In overruling the motion to dismiss the petition he announced that the mere shadowing of a jury by the appellants, irrespective of the effect the shadowing had upon the jurors, amounted to a criminal contempt of court. He remained under this impression throughout the entire trial, and his opinion clearly indicates that he adhered to it in his final conclusions. The trial court seemed to feel that when the appellants decided to send the Burns operatives to Washington to shadow the jury in the Fall-Sinclair criminal case, they committed an offense against the dignity of the court—and for that reason a contempt of court.

If the trial Justice had applied to the facts adduced at the trial the correct rule of law, namely, that an act, in order to constitute contempt of court, must obstruct, or directly tend to obstruct, the administration of justice, there might have been some justification for sustaining the objection to the introduction of evidence concerning the practice and custom of shadow-

ing juries in criminal cases. But the Justice could not relieve his mind of the conspiracy phase of the case. He always felt that there was something, to use his language, "sinister about it all." It was the supposed "attempt," rather than what actually occurred, that controlled him and influenced his final judgment.

With this bent of the court's mind always manifest, it became highly desirable, if not necessary, for the appellants to show, as it was a fact, that even the United States Government itself, had, whenever it became in the opinion of its office necessary, indulged in the practice and custom of shadowing juries in criminal cases.

Of course this appellant admits that if what actually was done by the operatives of the Burns Agency did in fact obstruct or directly tend to obstruct the administration of justice, there would be no purpose in showing that the practice of shadowing jurors in criminal cases had continued so long in the Department of Justice that it had become a custom—in fact, a law. An innocent act can constitute a contempt of court, but only if it has the essential obstructive tendencies. On the other hand, a crime, no matter how offensive, cannot, without such tendencies, be the basis of an adjudication of contempt of court. But in view of the position which the trial court and the Government took, it was error, we submit, not to permit the evidence of the general practice of shadowing jurors in the Department of Justice.

If the witnesses had been permitted to testify, it would have been shown that for a great many years a consistent and universal practice and custom had

existed in the Department of Justice of the United States and by the United States Attorneys General, of shadowing jurors exactly in the same manner as that employed by the appellants. Testimony of a great number of witnesses was proffered by the appellants to prove this custom and practice, but was rejected by the court.

There is no law upon the statute books that inhibits the shadowing of jurors by those interested in seeing that the jurors are kept free from any contact or outside influence. On the other hand, the custom established in the Department of Justice has become a rule of conduct—in effect, a law.

It was said by Mr. Justice McLean in delivering the opinion of this court in the case of *United States vs. MacDaniel*, 7 Peters, 1, at page 14:

> "A practical knowledge of the action of any one of the great departments of the government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done

> that can neither be anticipated nor defined, and which are essential to the proper action of the government. Hence, of necessity, usages have been established in every department of the government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits. And no change of such usages can have a retrospective effect, but must be limited to the future.
>
> "Usage cannot alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions."

Of like import is the language used by Mr. Justice Hughes in *United States vs. Birdsall*, 233 U. S., 223, 230; 58 L. Ed., 930. He said:

> "Every action that is within the range of the official duty comes within the purview of these sections. * * * To constitute its official action, it was not necessary that it should be prescribed by statute; it was sufficient that it was governed by a lawful requirement of the department under whose authority the officer was acting. * * * Nor was it necessary that the requirement should be prescribed by a written rule or regulation. It might also be found in an established usage which constituted the common law of the department and fixed the duties of those engaged in its activities. United States vs. MacDaniel, 7 Peters 1, 14, 8 Law Ed. 587. In numerous instances, duties not completely defined by written rules are clearly established by settled practice, and action taken in the courts of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery."

The above was quoted with approval in the case of *Sears vs. United States*, 264 Fed., 257, 261.

The Court of Appeals of the District of Columbia has dealt with this same question, and held that in the absence of statutes, custom is well recognized; and in the case of *United States Shipping Board vs. Levensaler*, 53 App. D. C., 322, the court received evidence to establish the existence of the custom relating to shipping.

Attention is called to the case of *United States vs. Reindeer*, a case decided by the General Term in 1848 in the Circuit Court of the District of Rhode Island and reported in the 27th Volume of Federal Cases, the opinion being delivered by Circuit Judge Woodbury. It was a libel suit, the libel of the vessel under the Act of Congress of February 18, 1793; and involved the question of forfeiture because of the violation of the statute of the United States respecting fishing. The court said at page 761:

> "Usage can be proved also to explain whether a voyage has been properly pursued or not under an insurance. What course, in certain cases, it may be customary to sail; in what manner the trade may be carried on at anchor; and probably what fish can be captured without amounting to deviation, can all be proved *aliunde* the policy, and will protect the insured while acting within the usage. So, usage to construe a law in a particular case, is some evidence that the construction is right, or should remain. United States vs. MacDaniel, 7 Peters 1.

"But I do not despair of the libel on these grounds alone as they might be deemed in some respects novel, and are not necessary.

"Yet they appeal strongly to the court in favor of a liberal construction to protect a confiding class of people, who, in this case, did the acts complained of under the sanction, if not advice, of the officers of government themselves, that had the execution of this branch of the laws in their charge, and who did these acts in conformity to a custom construing these laws in that manner in those places, very uniformly from the period of their enactment.

"Nor do I dwell on the hardship to honest, plain men being visited by penalties for breaking laws when adhered to, as read and interpreted erroneously to them by public officers. That, however, furnishes a strong reason, by means of contemporaneous and long construction, to show that such a construction was a true one. The fact, too, of its open existence for such a length of time, rebuts any intent of citizens, by conforming to it, to do what is wrong, by such conformity, and is another powerful argument in favor of adhering to this construction. Thus Lord Ellenborough observes: 'It has been sometimes said, *communis error facit jus;* but I say *communis opinio* is evidence of what law is, not where it is an opinion merely speculative or theoretical, floating in the minds of persons, but where it has been made the ground-work and substratum of practice. (Citing English cases.) It becomes a very grave question, where law-makers and law-executors have long slept over conduct as if not a departure from the law, whether the construc-

tion should suddenly be changed and really innocent persons be ensnared and prosecuted by a new construction. *Adams vs. Jones*, 12 Peters, 210. *'Cotemporanea expositio est optima et fortissima in lege.'*

"Finally a construction so long and publicly prevailing, and this by the sanction of the local officers, and without any dissent by the Treasury Department, through instruction, correspondence or circulars, operate strongly in its support. * * * And it is fortified even by the silence of Congress itself, not legislating more specifically to prevent it, but knowing as it must, the view which its own officers and the community have taken of the proper construction of the existing laws. Nor does this conclusion violate what seems a true rule to reach the proper construction, and enforce the real design of the law; because under all the circumstances, what would appear to be the most appropriate course to settle, under the 32nd Section, the design or meaning of the words 'different trade or employment'? Surely to adopt a construction, not departing from what has long been sanctioned, unless a contrary one is inflexibly required by law; surely the broadest and most liberal views, to sustain what accords with usage, and what prevents a forfeiture when no penal intent has existed."

When there is no law upon the subject, but a long established usage and custom of the Government, and if a citizen follows that usage and custom, shall he be caught in the trap? Shall he be the first to whom the finger of condemnation is pointed? Have we reached

that point in our national life where it shall be allowed the Government the right to shadow juries whom its officers suspect, and the same right be denied the citizen?

THIS APPELLANT HAD KNOWLEDGE OF THIS CUSTOM WHEN HE ACCEPTED THE EMPLOYMENT FOR THE BURNS AGENCY.

Counsel are not claiming ignorance of the law, but knowledge of the law. Their position rests upon the proposition that this appellant, at the time he agreed to accept the employment from the appellant Day, on behalf of the appellant Sinclair, had knowledge of the fact that the Government had, for many years, been engaged in this practice; that it was the custom of the Government to place juries under espionage; and, knowing that that was the practice engaged in by the Government, and feeling in his own mind that it was the lawful thing to do, he therefore accepted this employment. It follows, then, that, for the reasons above given, it was error to refuse to admit testimony tending to prove that this appellant had knowledge of the practice of the Department of Justice of shadowing juries in criminal cases, before he accepted the employment by the appellant Day for the Burns Agency.

Point XI.

The Trial Court Erred in Admitting and Considering Testimony Relating to the Kidwell-King-Akers Incident, With Which the Appellants Had Nothing to Do.

The petition states that "the jury was finally discharged from further consideration of said cause and a mistrial declared *because of the fact* that sworn charges had been made against the said Edward J. Kidwell, Jr., one of the jurors, to the effect that he, the said Edward J. Kidwell, Jr., while said trial was in progress, to wit, on the 29th day of October, 1927, outside of the courtroom where said cause was being tried, to wit, at No. 411 Four and a Half Street Southwest, in the city of Washington, in said District of Columbia, had made remarks in the presence and within hearing of J. Ray Akers and Donald K. King concerning his attitude and intended action as a juror aforesaid towards the issues on trial in said cause." One would expect to find in the petition an allegation of some connection between this incident and the conduct of the appellants. No such allegation is found. Nor is there any evidence in the entire Record of any such connection. What is a far more interesting inquiry is why neither Kidwell, King nor Akers were made parties respondent in the proceeding, and why the trial court and the District Attorney protected King and Akers, when the testimony of the Government disclosed that these two men committed the only contempt of court, and a very serious one at that?

The Government, by its testimony, proved that King and Akers had planned to meet Kidwell to make him talk about the case, and did so meet him and talk to him, and gave him intoxicating drinks in order to make him talk. The introduction of this evidence was strenuously objected to by counsel for the appellants on the ground that it was irrelevant, incompetent, and immaterial, in that it was in no way connected with any of the appellants or their agents, and that the appellants were in no way responsible, legally or morally, for the acts of Akers and King. Nevertheless the testimony was admitted. Then it was brought out by the testimony of King himself that he was in no way acting for any of the appellants when he planned with Akers to meet Kidwell, but was acting solely in the capacity of a newspaper reporter.

The testimony concerning the incident, briefly stated, is that King, a newspaper reporter, learning that juror Kidwell might be induced to talk, met an acquaintance of the juror by prearrangement, and both induced the juror by entering into conversation with him, and, as King brazenly admitted, by treating him to intoxicating liquor, to talk about the case, all of which, it is admitted by all parties, was done without the slightest knowledge, consent of, or for the benefit of any of the appellants.

Point XII.

The Trial Court erred in Restricting the Right of the Appellants to Discredit the Government's Witness McMullin, Both by Limiting the Cross-examination of the Witness and by Rejecting Testimony Concerning His Previous Life, and Relating to Fraudulent Acts of the Witness.

To the Government, at least, McMullin was at first an important witness. True it is, that there is not one word of his testimony that even approaches proof of any acts committed by the appellants or their agents that constituted contempt of court, but he was produced as a witness, and the appellants had the right to discredit him by the means recognized by the established rules of evidence.

The proffered testimony is discussed briefly in the statement of facts, and, inasmuch as McMullin was so completely demolished as a witness and so little consideration given to his testimony, it would serve no good purpose to restate that testimony. We do, however, cite a few cases bearing on the court's erroneous ruling.

A clear and comprehensive statement of the law on this subject is made in 28 Ruling Case Law, Section 197, at page 607. It is:

> "A question will not as a rule be allowed on cross-examination which is obviously irrelevant, but a witness may be cross-examined as to matters irrelevant to the issue in order to dis-

credit his testimony by what he himself may state in answer although not for the purpose of contradicting him by another witness. This is true regardless of the rule prevailing with respect to the scope of cross-examination as to matters directly material to the issue. Although as to these matters the cross-examination can not extend beyond the range of the direct examination, yet the fullest inquiry must be allowed into collateral matters, whether they have been the subject of direct examination or not. In fact, this line of inquiry is one of the most important purposes of cross-examination and is the principal factor in establishing cross-examination as one of the chief agencies for the development of the truth in judicial inquiries. By means thereof the relation of the witness to the cause or the parties, his bias or interest, if he has any, his character for truth and veracity, indeed any collateral fact which may bear on his truthfulness and impartiality may be brought to light. Any question may be put which reasonably tends to explain, contradict, or discredit any testimony given by him, or to test his accuracy, memory, veracity, or credibility. Cross-examination with a view to direct impeachment is not the limit of the right. Regardless of the rule prevailing in a jurisdiction as to the scope of cross-examination on material matters, it is always permissible on cross-examination to lay a foundation for impeaching the witness by proving prior contradictory statements, and where a witness admits the existence of a variance between his testimony and his statements on other occasions, to examine him as to the motives inducing the variance."

The case of United States *vs.* Wood, 4 Dak., 455, at page 473; 33 N. W., 59, which is particularly in point, is valuable in that it quotes a very illuminating section of Greenleaf on Evidence. The court said:

> "In 1 Greenl. Ev. 14th ed., the learned author, while recognizing the fact that the courts are not in perfect harmony upon the subject, uses the following very pertinent language in announcing a proposition of elementary law: "There is certainly great force in the argument, that, where a man's liberty or his life depends upon the testimony of another, it is of infinite importance that those who are to decide upon the testimony, should know, to the greatest extent, how far the witness is to be trusted. They can not look into his breast to see what passes there, but must form their opinion on the collateral indications of his good faith and sincerity. Whatever, therefore, may materially assist them in this inquiry is most essential to the investigation of truth; and it can not but be material for the jury to understand the character of the witness whom they are called upon to believe, and to know whether, although he has not been convicted of any crime, he has not in some measure rendered himself less credible by his disgraceful conduct. The weight of this argument seems to have been felt by the judge in several cases in which questions tending to disgrace the witness has been permitted in cross-examinations. * * * Nor does there seem to be any good reason why a witness should be privileged from answering a question touching his present situation and employment and associates, if they are of his own

> choice, as, for example, in what house or family he resides, what is his ordinary occupation, and whether he is intimately acquainted and conversant with certain persons, and the like; for, however these may disgrace him, his position is one of his own selection.'"

The above was also quoted with approval in the case of *State of Idaho vs. Loon*, 158 Pac., 233.

The same rule was applied in the case of *Tla-Koo-Yel-Lee vs. United States*, 167 U. S., 274, decided in this court. The opinion, given by Mr. Justice Peckham, is very short, and will be given in full, as counsel contend that it is decisive on the question. It is as follows:

> "This case comes here on writ of error to the District Court of the United States for the District of Alaska. The plaintiff in error is an Indian, and was indicted with another Indian, named Tak-Ke, and upon a separate trial, was convicted of the crime of murder in killing one August Jansen on or about the 5th day of January, 1894, at or near Shekan, within the Territory of Alaska and within the jurisdiction of the District Court thereof. He was thereupon sentenced to be hanged.
>
> "Upon the trial in the District Court it appeared that the authorities at Fort Wrangel, some 70 miles from Shekan, were informed by some Indians at that place in May, 1894, of the alleged murder of Jansen in the preceding January at Shekan. In July of that year the United States Commissioner, a deputy marshal and some others started from Fort Wrangel in a

steam launch, chartered for the purpose, and went to Shekan to find the body, if possible, and to take such other proceedings as were proper in the premises. An Indian woman, Tlak-Sha, voluntarily accompanied them for the purpose of showing where the body was to be found. A short distance from Shekan the party landed on the beach, and under her direction search was made, and the body of Jansen was discovered on the beach covered over with rock and brush. The body was sufficiently preserved to be identified, and it was recognized by some of the party. After the finding and recognition, the defendant, with the other above named Indian (Tak-Ke), was indicted for murder, and, upon the defendant's separate trial, the Indian woman was sworn as a witness. She testified that in January, 1894, the deceased was killed by the defendant and Tak-Ke, who was her husband; that they were in a small sloop near Shekan at the time of the murder, and there were present the deceased, three male Indians, herself and her child. The third Indian was named Ke-Tinch, and he was also sworn on the trial, and while differing in some of the details from the story of the woman, he corroborated her in the statement that the killing was done by the defendant and by the woman's husband, the defendant shooting the deceased and the woman's husband striking him on the head with an axe.

"The two Indians above named are the only witnesses to the killing. The female witness accompanied the searching party from Fort Wrangel, and with her assistance the body was found. As one of the two witnesses on the trial

she testified against the defendant and her own husband, who was indicted for the crime, though not then on trial. It is apparent how important it was to show to the jury, if possible, the bias, if any, of the witness against the defendant, or to show that her credibility was not to be depended upon by the jury.

"In the course of her cross-examination upon the trial the following questions were put to her:

"Q. Before this affair took place were you Tak-Ke's wife? A. Yes, sir.

"Q. Whose wife are you now? A. I am not married now.

"Q. Who are you living with now?

"Counsel for the prosecution objected to the above question as immaterial and incompetent. Objection was sustained by the court, to which ruling counsel for the defendant then and there duly excepted.

"Q. Is it not a fact that since your husband was arrested and convicted you have been living with this witness Ke-Tinch?

"Counsel for the prosecution objected to the above question as incompetent. The objection was sustained by the court and an exception taken.

"Q. Is it not a fact that shortly after this affair took place that you and the witness Ke-Tinch agreed to live together if your husband was convicted and you yourselves got clear?

"Same objection was taken, which was sustained by the court, and an exception taken.

"Q. I will ask you if it is not a fact that this defendant got so drunk (upon this occasion) that he was laid in the canoe and covered over,

and did not recover until after the body had been concealed? A. No, sir; he didn't get drunk; nobody drank.

"Q. I will ask you if it is not a fact that when he awoke and saw the sloop sailing away and asked where the sloop was going, that Tak-Ke told him the white man was sailing away?

"Objection taken to the question as incompetent, irrelevant and immaterial. Objection sustained by the court and an exception taken.

"We think answers to all these questions should have been permitted. The questions were directed to the purpose of showing material facts bearing upon the character and credibility of the witness, and the counsel for the defendant ought to have been permitted to proceed with his examination and obtain answers from the witness to that end. The two Indian witnesses (of whom the woman was one) did not agree in regard to the details of the alleged murder, and there is enough in the record to show that they were both of a low order of intelligence, and that they testified without any very solemn appreciation of their responsibilities as witnesses upon the trial of one individual for the murder of another. The whole occurrence at the time of the alleged murder is left in a good deal of confusion, and the credence to be given to the testimony of the woman was of the highest importance. * * *

"The judgment must therefore be reversed * * *."

This question is also very ably and very fully discussed by Circuit Judge Kenyon in the case of *Williams vs. United States*, 3 Fed. (2nd), 129, decided by

the Circuit Court of Appeals, Eighth Circuit, in November, 1924.

Point XIII.

The Findings of Law and Fact Made by the Trial Justice, in His Decision at the Conclusion of the Case, are Erroneous.

What we have heretofore said with respect to the court below laboring under an erroneous impression of what the true rule of the law in this case is, is apparent from a statement made by him in the early part of his decision.

After several general statements, His Honor said:

> "That the respondents here take the position that shadowing a jury, shadowing such as they admit in this case, is a legal right, harmless in its character, but if I have understood some of the contentions made here today aright, this right to so shadow, harmless as it is, changes its character if the fact of the surveillance shall be disclosed to those who are the subjects of it; not by contact, necessarily, but if their consciousness should be penetrated by the knowledge that such a legal right was being exercised, a harmless one at that, at once takes on a different character by the mere fact that it penetrates, in a given case, penetrates the consciousness of those who are subject to the surveillance. I find it quite impossible, applying logic and legal reasoning, to discover why an act alleged to be a harmless one provided it is not discovered, if it is discovered it becomes harmful."

Quite obviously the trial court overlooks the ruling in the Carroll case, and other like cases, where an attempt was made to influence a juror, but failed to reach the mark. From the beginning of the case to the conclusion the trial court was never able to distinguish between the attempt that never reached the consciousness of the subject, and an act or attempt which was brought home to the juror, and by that very fact had a tendency to obstruct or to interfere with his judgment and to obstruct the due administration of justice.

After quoting the section of the Judicial Code that is pertinent in this case, and discussing the comments of counsel in the arguments, the court continued:

> "And, indeed, I have rather got the impression from some statements made by one or two of the counsel for respondents in the arguments that this right claimed by them logically—and when I say logically I mean in accordance with the legal reasoning as well as the logic of logicians—that the right claimed by them has practically no limits at all and that it may include the court, the judge presiding in the court, or the judges; or if it can be done in the trial courts, it can be done with respect to the appellate courts of the country. No court would be free from the exercise of this claimed right of surveillance."

Here again the trial court was in error. It never was the claim of the appellants that they should be exonerated from blame, solely because they had the legal right to shadow a jury in which they were inter-

ested. Their real claim is and always has been that, irrespective of whether or not the act which they were charged to have committed was a crime or not, they cannot be legally adjudged guilty of contempt of court unless that act in itself obstructed or directly tended to obstruct the administration of justice. Of course, the appellants went further and showed, we respectfully submit, that what they did was not prohibited by law. This was made necessary, as we have shown before, by the bent of the trial court's mind as shown throughout the trial.

Then later we find this expression in the opinion:

> "And so I say again, as I said before, the claimed right here is, first, that it is a right; a right that may not be interfered with in its exercise. What is the right that is claimed? I am speaking now of the claim that respondents make in this case. It is a claim that they may establish such a surveillance of the jury, judge, prosecuting officer, witnesses. It is charged that all of that was done in this case. If it could be done, if the right exists, as claimed there, saying nothing about this right as some of the arguments in support of it allege, just so long as you conceal what you are doing, it is a right; *but once it is disclosed and penetrates the consciousness of those subject to it in some magical way, it becomes at once harmful.* I am unable to follow a contention of that character. I can only see in the assertion and in the exercise of a right such as this one that makes almost inevitably *and in and of itself when exercised an obstruction to the administration of justice.* And I am unable to escape

> from that conviction, and I, too, have meditated and reflected upon it as I am sure from the earnestness of counsel for respondents that they too have meditated and reflected upon it." (Italics ours.)

What the trial court meant to decide was, that as a matter of law the mere shadowing of a jury is "in and of itself, when exercised, an obstruction to the administration of justice." In other words: the shadowing of a jury was *per se* criminal contempt of court, and it made no difference whether the object shadowed was aware of it or influenced by its existence. Here again it is respectfully submitted the court was in error.

The trial court then discussed the morale of the alleged conduct of the appellants and made some general observations of the duty of courts to protect themselves against contempts of their authority. It is difficult to tell whether the trial court was of the opinion that the morale of the situation was controlling, and certainly we have no quarrel with him on the general proposition of the right of the courts to protect themselves from an obstruction of justice.

Then the trial court refers to the proffered testimony concerning the practice of the Department of Justice in shadowing jurors, and observed that such testimony was not in the case, which of course was, in a sense, correct, because it was improperly excluded, and then observed that the instances, the evidence of which was offered by the appellants, in which the jurors were shadowed by the Department of Jus-

tice agents were cases where the shadowing was done "with the consent of the court in which the jury was sitting." There is no basis at all for any such assumption. The trial court then followed with a few more general observations, and then considered the evidence respecting the coercion and intimidation of the witness Kidwell and proceeded to exonerate Mr. O'Leary, the Assistant District Attorney, of the way in which Mr. Kidwell was handled. As Kidwell was a government witness, and his testimony in the record does not disclose any act of the appellants constituting contempt of court, and since Mr. O'Leary was not on trial, it is surely not necessary to comment on the court's opinion respecting this phase of the case. Then motions were made to dismiss the petition, which were overruled, and the court then, at the request of counsel, took up the question of the part that appellant Wm. J. Burns took in the surveillance. As this particular part of the trial court's decision is treated in the separate brief of Wm. J. Burns, we pass that over and proceed to the discussion of the remainder of the trial court's decision.

After disposing of the defense of Wm. J. Burns, the trial court had this to say:

> "If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publication of the affidavit regarding it, but at least in part, necessitated a mistrial."
>
> "Now, what should be the proper penalty?"

Then followed exceptions to the finding of facts in the trial of the case. Then the trial court continued:

> "I do not want there to be any misapprehension at all about the Court's conclusions as they have already been announced. Dealing with all the evidence in this case, I did deal with all the evidence in the case in reaching these conclusions. Some plea has been made here this afternoon on behalf of these respondents; pleas that might be made at any time with respect to anyone who commits a criminal offense in the honest belief that he is doing something within his legal rights. We can not proceed to administer the law upon the theory that one did not know it was against the law. They may believe that it was not against the law. They may believe that it was a perfectly legal act, but if it be an act against the law their belief about the matter, or their ignorance of the law does not save them from the consequences of their act. I have said enough about the disastrous thing that has happened here in the breakdown of this criminal trial, a breakdown that from the evidence in this case is clearly attributable to the acts of these respondents. Clearly so. If they had not established the surveillance for aught that appears in this case, there would have been no breakdown of that criminal case, a case involving, no doubt, a great deal of money in its presentation; a great deal of money on both sides; the expenditure of a great deal of money on both sides. It broke down, and it broke down because of the surveillance of this jury. If it had not been, for aught that appears in this case, for the surveillance, there would

not have been the incident regarding the juror Kidwell.

He was not made a party respondent in this case. But there was the surveillance, and I do not care to go back over the record, but it is here in the record in connection with the views expressed here about the surveillance. Talk about an admonition because a man believed he was doing that which he thought he had a right to do! It is no answer to it at all."

What the trial court said, or attempted to say, was that because of the publicity given to the shadowing *after the mistrial and after the jury was discharged* made the shadowing an obstruction to justice. In the first place, the breakdown of the criminal trial was not due entirely to the fact becoming known. What really caused the trial court to discharge the jury was the affidavit of King that he had talked with juror Kidwell, in which conversation the juror had expressed his opinion about Mr. Sinclair and about what he, Kidwell, intended to do. That really was the primary cause for the discharge of the jury.

From all of the evidence—both of the Government and of the appellants—the appellants had nothing whatever to do with the King-Kidwell-Akers incident.

It cannot fairly be said that the surveillance was the cause of the mistrial. It may be that the publicity given to the surveillance by the attorneys for the Government who were prosecuting the Fall-Sinclair criminal case, and the publicity given to it by the court rendered a mistrial advisable, but these appellants had nothing whatever to do with such publicity. The pub-

licity was unnecessary. It is clearly shown from the Record that none of the jurors knew they were being shadowed. Messrs. Roberts and Pomerene knew for a week before the mistrial that the surveillance was going on and they did not see the necessity of making it public. To their minds it could not have been objectionable or improper, or they would not have permitted it to have existed a moment after becoming aware of it. They must have known when they were first apprised of the fact of the shadowing that the jurors were ignorant of the surveillance and we submit that it was not necessary for the trial court to have brought the surveillance to the knowledge of the jurors. Indeed, it is clear from the Record that if the Government's attorneys in the criminal case in the trial court had not given out the information concerning the surveillance, the jurors would have been, up until the conclusion of the criminal case, if not to this very day, ignorant of its existence.

It cannot, therefore, be said that the surveillance was the cause of the mistrial. The petition, while it alleges a mistrial by way of introduction, does not charge that such mistrial was an obstruction of justice or that the mistrial was declared because the jurors knew that they were being shadowed. In fact in the whole petition there is no allegation that the jurors knew of the surveillance. True it is, that the petition alleges that there was an attempt to prevent the due administration of justice by bringing about a mistrial, but the mistrial alleged in the petition was to be accomplished, not in the manner described by the trial court, but by corruptly

influencing the jurors to disagree among themselves as to the issues of the criminal prosecution or by "concocting false charges against one or more of said jurors" (Rec. 4).

And finally, there is no evidence in the entire case that there was a mistrial, or what the cause of the mistrial was, if a mistrial took place. The Government had opportunity to introduce in evidence in the trial below the record in the criminal case showing the mistrial and the causes therefor, but it refrained from doing so. So as the record now stands there is no evidence whatever that there was a mistrial. Certainly there is no evidence of the cause therefor. True it is that the petition alleges a mistrial and assigns causes therefor, but this appellant submits that such allegations are not evidence.

But, even if the surveillance had been the primary cause in the trial court's mind, it cannot be said that the shadowing of the jury caused the mistrial, or in any way obstructed justice. This obviously correct statement can be easily tested by the following supposititious case (we draw it along parallel lines with the Carrol case, for instance). Suppose that A had a brother being tried for a criminal offense and went to B, who happened to be acquainted with one or several of the jurors, and persuaded B to go to his friends on the jury and speak a good work for A's brother. Let us even suppose that A delivered money to B with which to bribe the jurors if necessary. Then let us suppose that for some reason or other B never attempted to bribe the jury, although he and A had actually con-

spired to effect the corruption of the jury; and suppose further that the conduct of A and B came to the knowledge of the trial judge in the form of an affidavit, and the judge, in reading the affidavit, immediately declared a mistrial. Would it then be permitted under the law for the trial judge to say, "If you had not conspired to corrupt the jury, the affidavit concerning your conduct would not have been made, and I therefore would not have discharged the jury. Therefore, your conduct has amounted to the obstruction of justice," or, to use the language of the trial court, if they had not established the conspiracy "for aught that appears in this case, there would have been no breakdown of that criminal case, a case involving, no doubt, a great deal of money in its presentation; a great deal of money on both sides; the expenditure of a great deal of money on both sides. It broke down, and it broke down because of the" attempt to corrupt the jury. This is exactly what was done in this case. The trial court did not find that the act of shadowing the jury, when and as it was being performed, obstructed the administration of justice, but it only did so because it came to the knowledge of the judge, and the judge, without any reason, we submit, declared a mistrial. The declaring of the mistrial was the act of the trial court. It may or may not have been justified by the conduct of Kidwell, but it certainly, from all the record, was not justified from anything which the appellants or their agents did. The trial court reasoned in a vicious cycle. He says in substance: "I declared a mistrial because your conduct was improper, and your conduct was improper because I declared a mistrial."

CONCLUSION.

This appellant contends that the trial court erred: (*a*) In not dismissing the petition and discharging this appellant at the commencement of the case, for the reason that the petition did not allege acts constituting contempt of court on the part of this or any other appellant; (*b*) that the record in the case discloses no facts showing that this appellant alone or in conjunction with any other person committed any act which obstructed or tended to obstruct the administration of justice, and, therefore, the court should have discharged this appellant either at the conclusion of the Government's case or at the end of the whole case; and (*c*) because the trial court, in its decision, made findings of fact wholly unsupported by the evidence, and conclusions of law that were erroneous, in that he held that the mere shadowing of a jury, independent of its obstructive or non-obstructive tendencies, constituted contempt of court, and in that he held that the discharge of the jury and the declaring of a mistrial was an act for which this appellant was responsible and hence amounted to contempt of court.

And the appellant respectfully submits that the judgment of the trial court should be reversed.

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APPENDIX.

The Proximate Consequences of An Act.

By Joseph H. Beale.

I.

"*In jure non remota causa sed proxima spectatur.* It were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth it selfe with the immediate cause, and judgeth of acts by that, without looking to any further degree."[1] The meaning of this maxim of Bacon is not clear. In medieval legal and philosophical Latin the word *causa* had four meanings: a thing or circumstance; a reason or excuse; a creative antecedent; a lawsuit. Of the examples given by Bacon to illustrate his maxim, not one is unmistakably a cause in the third sense; most of them are examples of the first meaning, and are to the effect that we do not look behind the immediate circumstances of an act to determine its nature. He allowed two exceptions: in case of "covenous acts" and of crimes. The former came before the chancellor, who was called upon by the terms of the bills to investigate precedent facts; and the example given of the latter was proof of the motive (a precedent cause in the second sense) to qualify the act.

Bacon was entirely familiar with the Aristotelian division of causes into four: the formal, the efficient, the material, and the final. He distinguishes these with respect to their importance.[2] The *final* cause,

[1] Bacon, Maxims, 1.
[2] 2 Nov. Org. Aphor., 2.

that is, the creative purpose, he says, "rather corrupts than advances the sciences, except such as have to do with the science of human action." The *formal*, that is, the result imaged by the creator, "is despaired of," There remain the *efficient*, that is, the active force, and the *material*, the passive condition upon which the active force works. These, he says, if they can be discovered only after investigation, are remote,[2] and "contribute little, if anything, to true and active science."[1]

In both passages Bacon seems to have the same thing in mind. He is combating the metaphysical tendency to go behind everything, and to find labored explanations for matters in themselves most simple; and he says that the law, having found the immediate physical causation, will not use metaphysical subtlety to distribute this causation among obscure distant antecedents. To use a modern analogue, if the law finds a man committing murder it will hold him for it, without taking time to find whether heredity or environment may not be more to blame than himself. Thus explained, the maxim is evidently not concerned with the modern problems of proximity or remoteness of result.

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[1] "Quales quaeruntur et recipiuntur, remotae scilicet."

[2] My learned colleague, Dean Pound, points out that Bacon was in this case combating the Aristotelian metaphysic, with its final cause; as Bacon says in another place, the physical causes are the efficient and material, the metaphysical are the formal and final causes. III. De Aug. Sci., 4. Fowler, Bacon's best and most sympathetic editor, points out his insistence upon the physical cause, 1 Fowler's Bacon's Nov. Org., 2 ed., 65, note 40, and finds in his opposition to the "remote cause" an example of his opposition to the theological and metaphysical form of reasoning—in other words, of the modern rather than the medieval turn of his mind. 2 Fowler's Bacon's Nov. Org., 2 ed., 2, note 13. Bacon's idea of the remote cause, therefore, was a purely physical idea; and he framed or found in the schools a maxim expressing the modern feeling, and asserted its truth in law; seeking for confirmatory examples in the Abridgements, and being perforce content with obscure, not to say remote, ones.

That Bacon's First Maxim was not recognized by lawyers before his time is clear from his examples. That lawyers for two hundred years after his time were uninfluenced by it seems clear from the authorities. No title, *proximate cause*, is found in any of the abridgments or digests before the end of the eighteenth century, nor has any reference to the maxim been noticed in any case before that time.

Meanwhile, however, the courts had been forced to deal with the problem of "consequential damage." It was enough at first to say, as Lord Holt did in *Roswell* v. *Prior*,[5] that "he that does the first wrong shall answer for all consequential damages." But it soon became evident that this responsibility must be somehow limited. The courts in laying down their limits were not agreed on the principle. While in *Ashley* v. *Harrison*[6] Lord Kenyon had said "the injury complained of was too remote," we find the idea expressed a few years later by Lord Ellenborough in *Vicars* v. *Wilcocks*[7] in the *dictum* that "the damage must be the legal and natural consequence of the words spoken." The first occurrence of the word "proximate" which has come to my attention—doubtless there were others earlier—was in the argument of counsel in *Ward* v. *Weeks*[8] many years later, where Sergeant Wilde said, "a man is liable only for the natural and proximate consequence of his actions, and not for remote consequences resulting directly from some intermediate agent." Greenleaf in the early forties, in his "Evidence," first clearly stated this principle in America: "The damage to be recovered must always be the

[5] 12 Mod. 636, 639. "Every one who does an unlawful Act, is considered as the Doer of all that follows." De Grey, C. J., in Scott v. Shepherd, 2 W. Bl. 892, 899 (1773).
[6] 1 Esp. 48 (1793).
[7] 8 East. 1 (1806).
[8] 7 Bing. 211,212 (1830).

natural and proximate consequence of the act complained of.'"[9]

One or two points may be noted here. First, there is in these cases no reference to Bacon's maxim; the earliest reference to this maxim which the author happens to have seen in any decision (doubtless there were earlier ones) was in *Scott* v. *Hunter*.[10] On the other hand, in many cases in which the subject was discussed at length the maxim was not mentioned.[11] It was reprinted in Broom's Maxims.[12] Second, that the court is here concerned with the consequences of an act, not with its cause; in very few cases up to the year 1909 is the proximity of the *cause* the subject of investigation. Third, that the courts do not use the word *proximate* alone, but in some combination, usually *natural and proximate*.

We have, then, to deal with a modern and gradually emerging principle that a person is responsible for the consequences of his act, but that responsibility is limited to such consequences as bear some sort of relation to the act. The serious study of this question by the courts has occurred only during the last fifty years; and by legal authors only very recently. The

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[9] 2 Greenl. Ev., 1 ed., 258 (1848). In Guille v. Swan, 19 Johns. (N. Y.) 381, 383 (1822), the Supreme Court of New York said: "Now, if his descent * * * would, ordinarily and naturally, draw a crowd * * * all this he ought to have foreseen, and must be responsible for."

[10] 46 Pa. 192 (1863).

[11] Harrison v. Berkley, 1 Strob. L. (S. C.) 525 (1847); Ivony v. New York Central R. R., 13 Gray (Mass.) 481 (1860); Gilman v. Noyes, 57 N. H. 627 (1876); Clark v. Chambers, 3 Q. B. D. 327 (1878).

[12] London, 1845; reprinted in Philadelphia in the widely used "Law Library." The fact that the earliest references in this country to the maxim are in Pennsylvania may perhaps be explained by the publication there of the American edition of Broom. According to Broom, the maxim had received no general application, but was "almost exclusively applied to" marine insurance.

summing up of the doctrine theretofore developed by Judge Smith in an earlier volume of the HARVARD LAW REVIEW[12] represents the most thorough examination of the subject yet made; and it is a rather striking fact that he ends where Bacon began; that the only "legal cause" is the efficient cause. It is submitted, however, that the matter cannot permanently be left there. Judge Smith himself did not regard his painstaking and scholarly work as final, but desired that his discussion should be the basis of further investigation. If it is true, as all agree, that the limitation of legal investigation to proximate cause or consequence is due to the impossibility of the court making a complete investigation and thus doing complete justice, the court, through some definite principle of law, should determine the general limits of proximity, and not leave it at large to the jury. It is the purpose of this article to suggest certain more definite principles of law by which the determination of proximity is to be regulated.

II.

The natural method of applying Bacon's maxim would be, to start with the consequence and work back to the cause. But as the law has actually developed, the method is reversed: we start with the human act and trace its consequences into a cause of action, and then trace further its consequential damage. This is a much simpler task. The causes of an event are all the preceding circumstances which brought the event to pass; and they are myriad. The consequences of an event, however, which still remain "efficient" are very few, and may easily be handled in an investigation.

[12] 25 Harv. L. Rev. 103, 223, 303.

The starting-point of any investigation of legal liability is some act or some non-action of a human being. But whereas an actor may always rightly be held to answer for the consequences of his act, since he has taken it upon himself to change the course of events, it is otherwise with a non-actor; he should be held responsible only if his failure to act was in itself a legal wrong, that is, if he had a duty to act. The non action of one who has no legal duty to act is nothing. It does not alter the course of events, and therefore it has no consequences. It is true that the omission of a legal duty also does not alter the course of events; but the non-actor, having been obliged by law to change events, is rightly held responsible for the consequences of not doing so.

Starting with a human act, we must next find a casual relation between the act and the harmful result;[*] for in our law—and, it is believed, in any civilized law—liability cannot be imputed to a man unless it is in some degree a result of his act. Imposition of liability, even that which seems most extreme, is yet based upon a causation by the defendant's act. Thus, liability of the owner for default of a pilot forced on him by a compulsory pilotage law is based ultimately upon the owner causing his vessel to enter port; liability for nuisance, however drastic, may be traced to the ownership of land; and liability of an employer under the Workmen's Compensation Act grows out of his carrying on the business.

Where the act is the failure merely of a legal duty, causation is established only when the doing of the act would have prevented the result; if the result would have happened just as it did whether the alleged actor

[*] Chicago, R. I. & P. Ry. v. Guthridge, 179 Pac. (Okla.) 580 (1919). This casual relation must be established by evidence, like any other part of the case. Ross v. Smith, 182 Pac. (Wash.) 582 (1919).

had done his duty or not the failure to perform the duty was not a factor in the result, or, in other words, did not cause it. Two typical applications of this principle may be given. In *Regina* v. *Dalloway*[15] it appeared that while defendant was driving carelessly, with the reins out of his hands, a child ran in front of the horses and was killed. Erle, J., charged that if by the utmost care on his part he could not have prevented the accident he must be acquitted. So where it was the duty of defendants to fence a hole they had cut in the ice of a lake, and plaintiff's horses ran away and were drowned through the hole, it was held that if any fence which defendant was obliged to build would not have stopped the runaways the defendant's failure was not a cause of the accident.[16]

This principle is illustrated by several recent cases. In *Piqua* v. *Morris*,[17] the embankment of defendant's reservoir broke away and the water injured plaintiff's land. The defendant had negligently failed to construct a sufficient spillway; but it appeared that the flood on this occasion was so extraordinarily great that a sufficient spillway would not have saved the embankment. The city's negligence was held not to be a cause of the loss. So in *Ford* v. *Trident Fisheries Co.*[18] where Ford, the mate, fell from the defendant's vessel and never rose to the surface, and the ship's boat was negligently lashed to the deck so that it could not be seasonably launched and used, it was held that, in the absence of evidence of the possibility of saving Ford, causation by the defendant had not been proved.

[15] 2 Cox C. C. 273 (1847).

[16] Sowles v. Moore, 65 Vt. 322, 26 Atl. 629 (1893).

[17] 98 Ohio St. 42, 120 N. E. 300 (1918). See to the same effect Montgomery L. & W. P. Co. v. Charles, 258 Fed. 723 (1919), where, however, the negligent act which was held not to have affected the result was one of commission.

[18] 122 N. E. (Mass.) 389 (1919).

Similarly in *Gutman* v. *Bronx Borough Bank*,[28] where plaintiff sent a check to her broker to keep good her margin on a falling stock, and defendant wrongfully refused to cash it, whereupon she was sold out, the court refused recovery unless it could be shown, by the course of the market, that otherwise she would not have lost both stock and check.[29]

It has been seen that an act which in no degree contributed to the result in question cannot be a cause of it; but this, of course, does not mean that an event which *might* have happened in the same way though the defendant's act or omission had not occurred, is not a result of it. The question is not what would have happened, but what did happen. A murdered man would have died in time if the blow had not been given; yet the murderer's blow is a cause of his death. A man would have died from a small dose of poison; yet if he was given twice as much, the entire amount of poison given him was a cause of his death.

Furthermore if two persons are active in bringing about a result, either by act or by wrongful omission, each act or omission is no less a cause of the result because the result might have happened exactly as it did though one of the persons had not acted, the cause attributable to the other having been sufficient to bring about the result. One might have caused the result, but in fact both did so. Thus where several persons, owning separate oil-wells, allowed oil to escape into a creek, where it became ignited and eventually burned plaintiff's building, each owner is a cause, and if the result is proximate all are equally liable.[30]

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[28] 188 App. Div. 664, 177 N. Y. Supp. 173 (1919).

[29] See also McMahon v. Western Union Co., 171 N. W. (Ia.) 700 (1919); Whitney v. Northwestern Pacific R. R., 178 Pac. (Cal.) 326 (1919).

[30] Northrup v. Eakes, 178 Pac. (Okla.) 295 (1919); Mummaw v. Southwestern Tel. & Tel. Co., 208 S. W. (Mo. App.) 476 (1918). The contrary decision in Gay v. State, 90 Tenn. 645, 18 S. W. 280 (1891), must be regarded as unsound.

A result is none the less attributable to the defendant's act or omission because it was followed or accompanied by a wrongful omission on the part of some one else. Thus, if it is the duty of two persons to do a thing and neither does it, the resulting injury is attributable to either failure.

Defendant had a duty to ventilate a mine; it was another's duty to inform him of any need for ventilation. Plaintiff was injured by lack of ventilation; the injury was a result of defendant's failure.[17]

Defendant was bound to supply a dry floor for workmen; another was employed to dry the floor by sanding. The floor being wet and not sanded, plaintiff slipped and was injured; this was the result of defendant's failure in duty.[18]

Defendant was bound to transmit a telegram to H asking for information for plaintiff; H was under an independent obligation to send the information and did not do so. Plaintiff's failure to get the information was due to defendant's failure to transmit the telegram.[19]

Defendant by his policy was responsible to plaintiff for loss of his vessel by perils of the sea. A seaman carelessly left a sea-cock open and the water coming in through it sank the vessel. The loss was by peril of the sea.[20]

III.

Granting that a certain event was the result of, that is, was caused by, a human act, the court will not necessarily follow the act into the result in question. The consequences of an act may be innumerable; to trace

[17] Reg. v. Haines, 2 C. & K. 368 (1847).
[18] Harwell v. Columbia Mills, 98 S. E. (S. C.) 324 (1919).
[19] Western Union Tel. Co. v. Huffman, 208 S. W. (Tex. Civ. App.) 183 (1919).
[20] Clarke v. Mannheim Ins. Co., 210 S. W. (Tex. Civ. App.) 528 (1919).

them would require infinite time and patience. Here, as in all affairs of life, it is necessary to reach a result which will secure to each interest the greatest amount of consideration which is compatible with an equal consideration to all other interests. To apply this principle to the question under discussion, the court can give to the tracing of the consequences of any particular act only its fair share of all the available time, considering the other acts which are waiting its attention. If, for instance, the court is called on to investigate the dropping of some substance, the court will watch it while it falls through the air; it will continue to watch it after it has fallen into an unstable or dangerous position; but as soon as it has reached a safe and stable rest the court will turn away to the investigation of some other act.[*] Its time is too short to spend in investigating apparently safe situations further. To use the common language in which this is expressed, the court will trace an act into its proximate but not into its remote consequences.

The rule that requires the exclusion of remote consequences is therefore a fundamental principle of law, based on the necessity of doing justice to all; and the question in any particular case, whether a given result is remote, is purely a question of law. This of course does not mean that the jury has no part in the determination of the question, which always involves the application of the law to facts, often quite complex. Particularly where the defendant's connection with the result is on the passive side the determination of the question involves the settlement of inferences of fact which are seldom so clear that the court can take the question away from the jury. But the rule of law which is to be applied to the facts must always be found by the court and given by it to the jury.

[*] Rex v. Gill, 1 Stra. 190 (1719).

This question has proved a puzzling one to courts and lawyers. It has already been seen that it first presented itself as a question of the limitation of consequences allowed to be considered; it became later confused with Bacon's maxim concerning "the impulsion of cause on cause," and a more serious confusion with negligence has frequently been noticed. The series of articles by Judge Smith greatly simplified the problem; a study of the subject as developed in criminal as well as civil cases has thrown light on the subject; and a conclusion as to the principles of law may be suggested. It is purposed in this article to suggest such principles, and to illustrate them largely by the cases decided in the last year and a half; so that this article in fact concerns itself with "the progress of the law" in the subject under consideration.

The study of proximate causation will prove to be a study of activity of force or of risk. A result is usually created by the impulsion of an active force upon a passive force; not necessarily, for it may be created by two active forces acting on each other, as by a head-on collision on a railway. Usually, however, but one active force is employed in bringing about a result. One active force at least is necessary, since nothing but an active force can bring about that change of conditions which we call a consequence. Furthermore, in so far as a passive force is traceable to a man it must be either (1) because that man caused it by an act which was an active force, the passive force being the spent form of the active force, or (2) because that man violated a duty to act upon it by an active force which he failed to apply. The whole problem may therefore be stated thus: when is one responsible for the operation (*a*) of an active force which he has created; (*b*) of an active force which acts upon a passive force which he created, or upon a passive force

which he was legally bound to change. Each time one or more active causes operate on a condition to create a new condition, a new causal step is taken, ending with the given result. This result is the direct result of the active force or forces which last acted upon the immediately precedent condition, and is the indirect result of the earlier acting forces. The active force which brings about the result without the intervention—the subsequent coming into action—of any other force is a direct cause of the result. All other forces are indirect. Every condition of what might be called the set stage on which the last active force acted is a precedent force; and of course no precedent force can operate to make a subsequent force remote.

We may therefore begin our investigation with the assumption that the immediate result of an active force is primarily the proximate result; and that if the principle of proximity is discoverable, it must be by some method of relating the defendant's act to the final active force. This final active force must be *prima facie* the "efficient" cause which Judge Smith in the article cited describes as proximate.

What, then, do we mean by proximity of result? Is the meaning a result that is physically direct, direct in time or place? Or is it logically direct, direct in causal sequence? There have been courts which urged the former view. The Court of Appeals in New York, in a series of cases dealing with the spread of fire, beginning with the Ryan case,[7] set a spacial limit to proximity of result. So eminent and sound a lawyer as Judge Cardozo felt obliged to assent to this view in a late case.[8] The case itself did not involve prox-

[7] Ryan v. New York Central R. R., 35 N. Y. 210 (1866).
[8] Bird v. St. Paul F. & M. Ins. Co., 224 N. Y. 47, 120 N. E. 86 (1918).

imity of causation, but the interpretation of an insurance policy. In the course of his interpretation the learned judge discussed the earlier authorities in the state on the subject of causation, and added that the view of causation there expressed, and apparently accepted by him,

"shows how impossible it is to set aside as immaterial the element of proximity in space. The law solves these problems pragmatically. There is no use in arguing that distance ought not to count, if life and experience tell us that it does."

It is submitted, with great deference (for Judge Cardozo is one of the author's judicial idols), that there is no such pragmatic sanction for the law of proximate causation. The passage is spoken entirely *obiter*, since the question was, whether a certain loss was covered by a policy of fire insurance. If we look elsewhere than to New York, we find no support for the theory of spacial proximity. Thus in fire cases the doctrine of the Ryan case has been frequently repudiated;[29] and in no other class of cases has it even been suggested. In one case[30] a person sent poisoned candy by mail from California to Delaware, where it was eaten by the victim; no difficulty was felt in holding the California sender to be the cause of death, though cause and effect were a continent apart. The argument that there must be proximity in time has no greater force. Thus, in a late case[31] it was held that under the statute of Pennsylvania an action for death

[29] Smith v. London & S. W. Ry., L. R. 6 C. P. 14 (1870); Kuhn v. Jewett, 32 N. J. Eq. 647 (1880); Hoyt v. Jeffers, 30 Mich. 181 (1874); Milwaukee & S. P. Ry. v. Kellogg, 94 U. S. 469 (1876).

[30] People v. Botkin, 132 Cal. 231, 64 Pac. 286 (1901).

[31] Western Union Tel. Co. v. Preston, 254 Fed. 229 (1918).

could be maintained although the accident which caused the death happened ten years before it; the connection between act and result being otherwise uninterrupted. It must be clear that the proximity called for by the principle under discussion is proximity in causation; too many new causes must not intervene between the human act and the result under consideration.

What, then, is this proximity in causation? For understanding it, a little consideration of causal action may prove useful. Take a given situation: forces quiescent, forming a general condition of affairs, what might perhaps be called a set stage. Into this condition a new active force is interjected, creating a rearrangement of affairs, a change of condition, a new event, which we call a result. This is the first step in causation. If, then, a second active force comes upon the scene, causing a new result, this second result is the indirect, not the direct, result of the first active force considered. Or, to vary the case, suppose upon the set stage another active force is working, whether prior to or concurrently with the force we are dealing with, the latter active force operates together with the others in bringing about the result, which is still direct.

The connection of the defendant with the final active force may be sought in two ways. His connection with it may have been an active one; either by himself bringing it into existence, or by causing another person to do so. On the other hand, the defendant may have acted, and the force thereby loosed may have spent itself, coming to equilibrium in the form of a condition of forces which may or not be stable. If, then, this condition is unstable, if it is in appreciable danger of being acted upon by an oncoming force, the

defendant who thus created a condition in the path of an oncoming force stands in a certain causal relation to the later force, though the relation is worked out through the passive line. The same thing may be said if the defendant whose duty it was to change a condition which was in danger of such an oncoming force failed to remove the condition; in that case also he comes into a causal relation with the new force.

Our further discussion will accordingly fall into two heads: first, where the defendant's connection with the final active force consisted in creating or causing it; second, where the defendant created a condition upon which the final force directly acted. To the consideration of the cases grouped in these two classes we now proceed.

IV.

Since, as we have seen, the closest causal connection possible is that between an active force and its direct result, whatever consequences may be proximate certainly this one must be. It is well settled, therefore, that a direct result of an active force is always proximate. Several classes of cases illustrate this principle:

(*a*) Injury direct and immediate, but unforeseeable.

The defendant assaulted the victim; the victim had heart disease, and died of fright. Defendant is the direct and proximate cause of the death.[32]

Fire against which defendant had insured short-circuited a machine, and thus caused such rapidity of action as to wreck the machine. The fire was a direct and proximate cause of the injury.[33]

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[32] State v O'Brien, 81 Ia. 88, 46 N. W. 752 (1890).

[33] Lynn G. & E. Co. v. Meriden Ins. Co., 158 Mass. 570, 33 N. E. 690 (1893).

(*b*) Injury caused by direct transmission of defendant's force, as by one brick in a row being caused to fall upon the next until the last brick is thrown down.

Defendant with his tug wrongfully ran against a pile in the river; the force was transmitted through intervening piles until it threw out a brace to keep two piles apart, and plaintiff's leg was caught between these two piles. This was the direct and proximate result of defendant's act.[54]

Defendant's automobile wrongfully collided with a pushcart and threw it against plaintiff, injuring her; the result is direct and proximate.[55]

A negligent collision of defendant's car with another car threw a standing passenger against plaintiff and injured him; this was a direct and proximate result of the collision.[56]

(*c*) Injury caused by the aggravation of a preëxisting disease or unhealthy condition.

Where a latent disease was aggravated by defendant's act, the act is the direct and proximate cause of the entire result.[57]

Where plaintiff was peculiarly susceptible to poisoning, his serious injury from poison to which his master's act illegally subjected him is the direct and proximate result of the master's act.[58]

(*d*) Injury caused through the creation and later development of a septic or diseased condition.

Where the injury causes septic changes in the body, there being no new outside force concurring, the re-

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[54] Hill v. Winsor, 118 Mass. 251 (1875).

[55] Solomon v. Braufman, 175 N. Y. Supp. (Misc.) 835 (1919).

[56] Mathews v. Kansas City Railways, 104 Kan. 92, 178 Pac. 252 (1919).

[57] Vosburg v. Putney, 80 Wis. 523, 50 N. W. 403 (1891); Hahn v. Delaware, L. & W. R. R., 92 N. J. L. 277, 105 Atl. 459 (1918).

[58] Louisville & N. R. R. v. Wright, 183 Ky. 634, 210 S. W. 184 (1919).

sulting harm is a direct and proximate consequence of the injury.[39]

In one important class of cases, however, the courts seem to have held the opposite view. Where defendant negligently caused a physical injury, the immediate effect of which was the insanity of the injured person, who in a fit of insane mania committed suicide, the death is held not to be a proximate result of the injury.[40] This opinion seems hardly reconcilable with the current of authority on this subject.

(*c*) Injury caused through the subsequent action of already operating natural forces.

The defendant, a master of a vessel, carelessly missed stays in a high wind and flood tide, and the wind and tide carried his vessel against a sea wall and injured it; defendant's negligent act is proximate cause of injury to the wall.[41]

It is to be noticed that the direct result of a *passive* cause is not necessarily proximate; proximity of result following primarily the active line. So where a train stood more than five minutes across a highway, in violation of law, and plaintiff's automobile driving along the highway collided with it, the position of the train was held not be a proximate cause of the collision, but "only a condition."[42]

Plaintiff through defendant's fault fell through a trestle and was rendered unconscious; while he was unconscious he contracted typho-malaria, there preva-

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[39] Development of septicemia: Armstrong v. Montgomery St. Ry., 123 Ala. 233, 26 So. 349 (1899). Development of carbuncle followed by septic infection: Day v. Great E. C. Co., 104 Wash. 575, 177 Pac. 650 (1919). Development of tuberculosis: Pullman Co. v. McGowan, 210 S. W. (Tex. Civ. App.) 842 (1919). Development of tuberculosis: Clarke v. New A. C. Co., 179 Pac. (Cal.) 195 (1919).

[40] Scheffer v. Washington, C. V. M. & Ct. S. R. R., 105 U. S. 249 (1881).

[41] Romney Marsh v. Trinity House, L. R. 5 Ex. 204 (1870).

[42] Gilman v. Central Vermont Ry., 107 Atl. (Vt.) 122 (1919).

lent, and died of it. The court held defendant liable, but it would seem that his negligence was not direct but that other circumstances caused proximity.[42]

Though there is an active force intervening after defendant's act, the result will nevertheless be proximate if the defendant's act actively caused the intervening force. In such a case the defendant's force is really continuing in active operation, by means of the force it stimulated into activity.

(*a*) The simplest case of this sort would be an effective request to the intervening party to act, as in the typical case of A employing B to kill C, or of A commissioning B to make a contract with C. The defendant published a newspaper, in which he printed an advertisement of obscene literature for sale. X ordered the literature in response to the advertisement. Defendant is a proximate cause of the sale.[43]

Defendant made a political speech in the street; persons crowding to hear him climbed upon a pile of paving stones and injured them. Defendant was a proximate cause of the injury.[44]

(*b*) Defendant may by his conduct so affect a person or an animal as to stir him to action; the result of such action is chargeable to defendant.

Defendant shot a dog in front of its owner's house; the dog ran frightened into the house and knocked down a woman. The injury to the woman was a proximate result of the defendant's act.[45]

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[42] Terre Haute & I. R. R. v. Buck, 96 Ind. 346 (1884).

[43] Rex v. De Marny, [1907] 1 K. B. 388 (1906).

[44] Fairbanks v. Kerr, 70 Pa. 86 (1871).

[45] Isham v. Dow, 70 Vt. 508, 509, 41 Atl. 585 (1898). Rowell, J., said: "The law treats the act of the intestate as the proximate cause of the injury, whether the injury was, or could have been, foreseen or not, or was or not the probable consequence of the act, for the necessary relation of cause and effect between the act and the injury is established by the continuous and connected succession of the intervening events."

Defendant, driving a sleigh, ran into a horse attached to another sleigh; the horse bolted and struck the plaintiff. Defendant is a proximate cause of the injury to plaintiff.[47]

Defendant by threats of violence drove his wife through the house until she jumped out of the window; he was a proximate cause of the injury thereby resulting to his wife.[48]

Defendant while making a street speech violently abusing a certain form of religion, caused the adherents of that form of religion to make an attack upon him, in the course of which some of his auditors were hurt; his act was a proximate cause of the injury.[49]

The defendant by his act may put some one in danger of loss (or of further loss), and that person may thus be caused to act defensively; the direct result of this defensive act is a proximate result of defendant's act. The intervening actor is usually the person whose rights are endangered by defendant's act.

Defendant threw a lighted squib into a crowd; as it was about to hit one in the crowd he threw it away from himself, and it exploded near plaintiff and put out his eye. Defendant was a proximate cause of plaintiff's injury.[50]

Defendant negligently sent out a coach with insufficient harness; a rein broke, and the horses ran. Plain-

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[47] McDonald v. Snelling, 14 All. (Mass.) 290 (1867).

[48] Reg. v. Halliday, 61 L. T. R. 701, 702 (1889). Lord Coleridge, C. J., said: "If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result."

[49] Wise v. Dunning, [1902] 1 K. B. 167 (1901). Compare Beatty v. Gillbanks, 15 Cox C. C. 138 (1882), where in a similar case the praiseworthy motive of the actor seems to have protected him from punishment.

[50] Scott v. Shepard, 2 W. Bl. 892 (1773).

tiff, reasonably believing that the coach was about to capsize, jumped to the ground and was hurt. Defendant was a proximate cause of the injury.[51]

Defendant wrongfully took plaintiff's horse and wagon; plaintiff spent time and money in looking for his property. This expense was a proximate result of defendant's act.[52]

Defendant wrongfully placed an obstruction across that part of a road used as a carriage-road; some one to clear the road removed the obstruction to the footpath; plaintiff, using the footpath in the dark, ran against the obstruction and was injured. This was a proximate result of defendant's act.[53]

Defendant set fire to the grass; plaintiff's wife, in order to save the house, attempted to put the fire out and was burned to death. Her death was a proximate result of defendant's act.[54]

Defendant, while driving a horse in the street, suddenly and negligently pulled around to avoid a coming vehicle; plaintiff, jumping out of the way of defendant's horse, got in the way of the other vehicle and was injured. This injury was a proximate result of defendant's act.[55]

There are very few authorities in conflict with the mass of cases supporting this proposition. One or two may be noticed.

Defendant wrongfully erected a levee. A number of those whose land was flowed cut the levee, flooding plaintiff's land below. The court held the result remote.[56]

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[51] Jones v. Boyce, 1 Stark. 493, 496 (1816). Lord Ellenborough, C. J., said: "If I place a man in such a situation that he must adopt a perilous alternative, I am responsible for the consequences."

[52] Bennett v. Lockwood, 20 Wend. (N. Y.) 223 (1838).

[53] Clark v. Chambers, 3 Q. B. D. 327 (1878).

[54] Illinois Central R. R. v. Siler, 229 Ill. 390, 82 N. E. 362 (1907).

[55] Boggs v. Jewell Tea Co., 263 Pa. 413, 106 Atl. 781 (1919).

[56] Bentley v. Fischer L. & M. Co., 51 La. Ann. 451, 25 So. 262 (1899).

Defendant started a prairie fire; plaintiff in attempting to put it out by a back-fire was burned. The injury was remote from defendant's act.[57] This was a decision by the notorious Robinson, J. His language on this point is worth quotation:

"When the fire was started, it was not subject to the control of any person, and it behooved all persons to keep out of its way. 'No man is responsible for that which no man can control.' Maxims (Comp. Laws 1913, § 7260). Even if defendant was negligent in permitting the fire to escape from his land, he was liable only for the proximate loss, and not for a death resulting from a person rushing into or in front of an onrushing flame. Such a loss is too remote."

Comment is unnecessary.

The intervening person may be a third person, acting either of his own motion or by employment of the person whose rights are in danger.

Defendant placed some one in danger of death; plaintiff was injured in an attempt to save him; the injury is a proximate consequence of defendant's act.[58]

Defendant negligently set fire to a child's clothes; the child's mother burned her hands while extinguishing the flame. This was a proximate result of defendant's act.[59]

Defendant wrongfully filled plaintiff's cellar with explosive illuminating gas; plaintiff sent a plumber into the cellar to find the leak. The plumber lit a match to find the leak, and the gas exploded, damaging plaintiff's house; this was a proximate result of defendant's act.[60]

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[57] Hogan v. Bragg, 170 N. W. (N. D.) 324 (1918).
[58] Eckert v. Long Island R. R. Co., 43 N. Y. 502 (1871); Bond v. Baltimore & O. R. R., 96 S. E. (W. Va.) 932 (1918).
[59] Wichita F. T. Co. v. Hibbs, 211 S. W. (Tex. Civ. App.) 287 (1919).
[60] Burrows v. March Gas Co., L. R. 5 Ex. 67 (1870).

This is the basis of the responsibility of the person causing a personal injury for the act of a physician or surgeon in attempting to cure the wound.

Defendant wounds plaintiff, who calls a physician to cure him; the physician, whether carefully or negligently, does an act which injures plaintiff; this is a proximate result of the wound.[81]

It is to be noted that the defendant is responsible for the physician's act only if that act is *bona fide* intended as an attempt to cure the harm inflicted by defendant. If the physician should seize the opportunity to experiment, or maliciously to harm the victim, the defendant's act would not cause the physician's. In the Bush case[82] the attending physician communicated scarlet fever to the defendant's victim. This was held not a proximate consequence of defendant's act. Nor is defendant responsible for a mistake of a nurse, employed to carry out the directions of the physician, who administers a wrong and harmful remedy.[83]

The defendant by his attack upon another may cause the person attacked (or that person's husband) to act in defense, and thereby be the proximate cause of the direct result of such action.

An assured person made an attack upon a woman; her husband in her necessary defense killed him. The assured person caused his own death.[84]

Defendant attacked a railroad train to rob it; defensive shots from the train killed a third person; defendant is a proximate cause of the death.[85]

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[81] Com. v. Hackett, 2 Allen (Mass.) 136 (1861); Purchase v. Seelye, 231 Mass. 413, 121 N. E. (Mass.) 413 (1918); Hoopman v. Reeve, 168 Wis. 420, 170 N. W. 282 (1919).

[82] Bush v. Com., 78 Ky. 268 (1880).

[83] Thompson v. Louisville & N. R. R., 91 Ala. 496, 8 So. 406 (1890).

[84] Bloom v. Franklin L. I. Co., 97 Ind. 478 (1884).

[85] Keaton v. State, 41 Tex. Cr. R. 621, 57 S. W. 1125 (1900). Defendants were forcing this person to accompany them; but the court was willing to decide the case without relying upon that additional fact.

Defendant joined in an attack upon an armory; soldiers stationed in the armory fired defensively into the mob, and killed a bystander. Defendant upon this ground should have been held a proximate cause of the death; but the court, in a questionable decision, held that he was not so.[66] The decision was not *in banc*, but at the trial of the case.

There is one state, however, which seems not to have accepted the doctrine of the cases just considered. In Pennsylvania, in cases of every sort, the courts have usually refused to regard the direct result of an active force as proximate unless it is foreseeable.

An engine on defendant's railroad negligently hit a woman at a crossing and threw her body against plaintiff, injuring him; this was held to be a remote result of hitting the woman.[67]

In one case, however, the Pennsylvania court has dealt with this subject as it would have been dealt with in states following the general rule.[68] The facts in that case were these: A spur track left the main track and joined it again a hundred feet farther on. The engineer of a small locomotive on the spur track carelessly ran into a passing passenger train. Just before the collision he reversed his engine, then closed the throttle and jumped out. The force of the collision threw the throttle open and the locomotive backed along the spur track and collided with the passenger train at the other end of the track, which the train had just reached, injuring plaintiff. The court held that the injury was a proximate consequence of the negligent collision. The court said:

"The engineer would be held to have foreseen whatever consequences might ensue from his negligence

[66] Cosa. v. Campbell, 7 All. (Mass.) 541 (1863). The decision has unfortunately been followed. Butler v. People, 125 Ill. 641, 18 N. E. 338 (1888); Com. v. Moore, 121 Ky. 97, 88 S. W. 1085 (1905).

[67] Wood v. Pennsylvania R. R. Co., 177 Pa. 306, 35 Atl. 689 (1896).

[68] Bunting v. Hogsett, 139 Pa. 363, 21 Atl. 31, 33, 34 (1891).

without the intervention of some other independent agency, and both his employer and himself would be held for what might, in the nature of things, occur in consequence of that negligence, although, in advance, the actual result might have seemed improbable."

V.

If the defendant's active force has come to rest, but in a dangerous position, creating a new or increasing an existing risk of loss, and the foreseen danger comes to pass, operating harmfully on the condition created by defendant and causing the risked loss, we say that the injury thereby created is a proximate consequence of the defendant's act.

A sick seaman was sent aloft by the master of the vessel, it being apparent that he was in danger there; the seaman by reason of his weakness fell overboard. This was a proximate result of the master's act.[8]

Defendant undertook to carry plaintiff to San Francisco by way of the Isthmus, but delayed and finally abandoned transportation on the Isthmus, leaving plaintiff in an unhealthy climate. Plaintiff contracted fever. This was a proximate result of defendant carrying plaintiff to the Isthmus and no further.[9]

Defendant wrongfully let down the bars of a pasture where plaintiff's sheep were kept; the sheep wandered out and were eaten by bears. If the jury found that the wandering of the sheep to where bears were was a danger of the situation, they should find for plaintiff.[10]

Defendant built an embankment across land of plaintiff with insufficient provision for carrying off the water of a river. In a flood the water was banked up against the embankment, and finally broke through

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[8] United States v. Freeman, 4 Mason (U. S.) 505 (1827).
[9] Williams v. Vanderbilt, 28 N. Y. 217 (1863).
[10] Gilman v. Noyes, 57 N. H. 627 (1876).

and injured plaintiff's land below. This was a proximate result of building the insufficient embankment.[72]

Defendant sent plaintiff into a tank filled with gasoline vapor; plaintiff was given an electric lamp on the end of a cord to light up the tank. The lamp was broken against the side of the tank, and the resulting spark exploded the vapor, injuring plaintiff. The court, finding that such an event should have been foreseen, held the result proximate.[73]

Defendant sold and delivered a jug of sulphuric acid not labeled as poison; the purchaser put it where plaintiff drank it, believing it to be buttermilk, and was poisoned; defendant was a proximate cause.[74]

A manufacturer sold a loaded rifle as unloaded; it was accidentally discharged and injured plaintiff; the injury was a proximate result of the manufacturer's act.[75]

On the other hand, where defendant's active force has come to rest in a position of apparent safety; the court will follow it no longer; if some new force later combines with this condition to create harm, the result is remote from defendant's act.

Defendant threw a skin out of a window, and it came to rest upon the ground. A wind later lifted the skin from the ground, and it was thrown against plaintiff and injured him. The injury was not a proximate result of the defendant's act.[76]

Defendant railroad put plaintiff, a passenger, off the train at the wrong station; she was forced to spend the night at a hotel there, and was injured by the explosion

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[72] Zollman v. Baltimore & O. S. W. R., 121 N. E. (Ind. App.) 135 (1918).
[73] Standard Oil Co. v. Allen, 121 N. E. (Ind. App.) 329 (1918).
[74] Burk v. Creamery P. M. Co., 126 Iowa, 730, 102 N. W. 793 (1905).
[75] Herman v. Markham A. R. Co., 258 Fed. 475 (1918).
[76] Rex v. Gill, 1 Stra. 190 (1719).

of a lamp in her room. The injury was not proximate to defendant's act."

The form of rule above stated is believed really to state the true distinction, and the one actually enforced by the courts. The wording of it, however, is not that ordinarily used. The commonest phrase, probably, is that the injury shall be the natural and probable result of the act; a phrase which involves at least a misuse of both adjectives. A more accurate phrase, which is gaining in use, is that the intervening force, unless it is to make the result remote, must be foreseeable. This phrasing is not far from accurate; but it leads to a wrong result in one class of cases, soon to be considered.

It will be noticed that in cases of the sort under discussion the jury must usually be called upon to solve a difficult problem: whether a risk was created by the defendant, or, as it is usually phrased, whether the result (or more accurately, the intervening force) was foreseeable. In the cases heretofore considered, there was seldom a disputed fact to be left to the jury. Given the causation of the second force by the first, seldom a matter of doubt, the proximity was a mere question of law. In the cases now under examination, however, the question of risk is usually one of doubt, the answer to which must be found by the jury. Much, therefore, depends upon how the question comes up. Does it arise on a demurrer to the evidence, or an exception to the direction of a verdict or to the failure to direct one? The question then is, whether on the facts as given the jury could properly find a risk—not what the court would find. On the other hand, if the case has gone to the jury, the only question can be, Is there reason to disturb the verdict? In the first case the Appellate

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" Central of Georgia Ry. v. Price, 100 Ga. 170, 32 S. E. 77 (1898).

Court must reverse the proceedings if there is a case for the jury; in the second case, it must affirm proceedings. In neither case is the Appellate Court at liberty to express its own idea of the facts.

This distinction, as well as the general rule, may be illustrated by the following cases.

(*a*) Cases where the jury should have been allowed to find a verdict; a directed verdict, or a demurrer to the evidence, was set aside.

Defendant turned a stream of water on the sidewalk in freezing weather; a passer-by slipped on the ice thereby caused, and was injured.[78]

Defendant fails to light a staircase in a tenement house, as he was legally obliged to do; plaintiff, a tenant, fell down stairs in the dark and was injured. This is a proximate result of the defendant's breach of duty.[79]

Defendant negligently left a service pipe with an open end under plaintiff's house and turned on odorless illuminating gas; plaintiff went under the house with a match to examine a supposed leak in a water pipe, and was injured by an explosion. This was held a proximate result of defendant's act.[80]

In case of the creation of a dangerous situation by failure to protect a dangerous structure the jury should pass on the question. So of imperfect insulation of electric wire at a point where persons might come in contact with it;[81] disrepair of a lever for stopping a machine dangerous to workmen;[82] failure to keep wall

[78] Cochran v. Barton, 233 Mass. 147, 123 N. E. 505 (1919).
[79] Tannenbaum v. Lindenberg, 105 Misc. 307, 173 N. Y. Supp. 68 (1918).
[80] Hahn v. Southwestern Gas Co., 82 So. (La.) 199 (1919).
[81] Olm v. New York & Q. E. L. & P. Co., 188 App. Div. 19, 176 N. Y. Supp. 370 (1919).
[82] P. Bannon P. L. Co. v. Page, 183 Ky. 367, 209 S. W. 4 (1919).

of shooting-gallery tight enough to prevent glancing bullets; [45] failure to light a structure within a railroad right-of-way at night;[46] failure to place a light upon a pile of bricks near a sidewalk.[47]

The defendant negligently struck the plaintiff, a police officer, and broke his leg; while convalescent and on crutches his crutch slipped, and he fell, breaking his leg a second time. The court held that the jury might find that his condition created a risk of this fall, or in the language of the court that the second fracture was a natural and probable result of the original injury.[48]

On the other hand, a demurrer to the evidence was allowed by the Supreme Court of Canada in a case which might well have gone to the jury. The defendant, a telephone company, wrongly extended a "guy wire" from its pole, which stood on the highway line, about four feet into the highway. The place into which it was extended was a grassed "bank" about six inches higher than the roadway. The plaintiff was driving along the road when his team became frightened and ran, swung up on the grass, caught the wheel on the wire, and threw out the plaintiff.[49] It is submitted that the case should have been given to the jury.

(*b*) But where the case is regarded as so clear that a jury could not be allowed to find a verdict for the plaintiff, the court has held it proper to direct a verdict for the defendant.

A workman attempted to alight from a slowly moving car, and his clothing was caught by a bolt on the

[45] Larson v. Calder's Park Co., 189 Pac. (Utah) 589 (1919).

[46] Norfolk & W. Ry. v. Whitehurst, 99 S. E. (Va.) 568 (1919).

[47] Sutter v. Metropolitan St. Ry., 208 S. W. (Mo. App.), 851 (1918).

[48] Hartnett v. Tripp, 231 Mass. 382, 121 N. E. 17 (1918). The court did not mention the cases of Wineberg v. Du Bois, 209 Pa. 430, 58 Atl. 807 (1904), or Snow v. New York, N. H. & H. R. R., 185 Mass. 321, 70 N. E. 205 (1904), in which the defendant was held not liable for consequences where a fall intervened. The latter case is probably distinguishable.

[49] Eberhardt v. Glasgow M. T. Assoc., 91 Kan. 763, 139 Pac. 418 (1914).

car so that he was carried along against his will and struck and hurt a fellow workman who at his order had previously stepped out and was walking alongside the car. The court held that this was not a proximate result of the order to leave the car. Whether it was a proximate result of the defendant's attempt himself to leave the car is a closer question, though it would probably be decided in the same way.[58]

Defendant blocked a public way by wrongfully leaving a wagon standing in it; plaintiff, driving through, was injured in attempting to get by the wagon; this is not a proximate result of defendant's act.[59]

This principle is or may be relied upon in cases where the lack of safety device or protection required by statute or ordinance is a proximate cause of an injury by failure of the protection; since the requirement proves the danger to exist, and the finding of a jury is unnecessary.[60]

(*c*) If the court itself passes on the facts, as it does in admiralty, this distinction is of course not applicable.

Defendant maintained a bridge with a swinging draw; a vessel gave the signal to pass through the draw; the persons employed to open the draw were unreasonably slow, so that it did not swing quite clear of the vessel, which hit the draw so as to increase its speed. The employees then failed to stop the draw at the proper place, so that it swung by and hit the vessel again as it was leaving the draw, injuring it. The court of Admiralty passed upon the whole question, drawing inferences of fact, and held that this injury

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[58] Woodward Iron Co. v. Gamble, 81 So. (Ala.) 810 (1919).

[59] Davis v. Mellen, 182 Pac. (Utah) 920 (1919).

[60] Fence around an excavation: Johnson v. Denison, 173 N. W. (Iowa) 46 (1919); Fernald v. Eaton, 180 Pac. (Cal. App.) 944 (1919). Fence around an area way (verdict directed for plaintiff): Rose v. Gunn Fruit Co., 211 S. W. (Mo. App. 85 (1919).

was a proximate result of defendant's unreasonable delay in opening the draw, and of its failure to stop it."[a]

It has been argued that the mere fact of the new force being foreseeable will not make the result proximate to defendant's act; it is so only where the risk of the new force was created or increased by the act. This is believed to be the rule upon which the courts actually proceed.

The application of the rule can best be studied in the actual decisions.

If the injury takes place by an active force which was threatening at the time of defendant's acting, the danger of which was not increased by defendant's action, in spite of the fact that he foresaw its operation, he has added no active danger to the situation and the loss does not result proximately from his act.

So where a railroad improperly delays carriage, and then starts it again, and in later crossing a flood-plain the goods are destroyed by a flood, the chance of which was as great at the time the goods should have been at the place as at the time they were there, the delay should not be regarded as a proximate cause of the flood."[b]

These cases gave rise to a long controversy not yet settled; the authorities are still divided. They are collected in *Green Wheeler Shoe Co. v. Chicago, R. I. & P. R. R.*"[c]

A little care in the analysis of the situation will make the above statement plain. The railroad has done two things, either of which might conceivably be the foundation of liability:

1. It has wrongfully ceased to carry; a failure to do

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[a] New England F. & T. Co. v. Boston, 257 Fed. 778 (1919).

[b] Denny v. New York Central R. R., 13 Gray (Mass.) 481 (1859). Contra: Michaels v. New York Central R. R., 30 N. Y. 564 (1864).

[c] 130 Iowa, 123, 106 N. W. 499 (1906); 1 Sedgwick on Damages, 9 ed., II 119-119b.

what by law it ought to do. This, however, so far from causing the loss, would absolutely prevent it, unless the delay is itself in a dangerous place; if so, the carrier is liable for the danger overtaking it there.

2. It has started the goods on again after the delay, and kept them going. If at this time the foreseeable danger were greater than at the time the delay began, it is admitted that this would be a proximate cause of the loss; but if not, the danger was one that the carrier was bound to run in the carriage of the goods. In fact, under such circumstances (assuming he was justified at the beginning in receiving the goods to be carried, i. e., that the danger was not a serious one and unknown to the shipper) the carrier would be violating its duty to the shipper if it did not carry the goods on.

If, however, there is no special danger at any particular point, but a constant risk of carriage which is necessarily increased by delay, the delay, since it causes the prolongation of the carriage, is a proximate cause of the loss due to the risk.[*]

The doctrine of "attractive nuisance," so called, is one of the law of Torts no less than of Causation; but it involves a causative element. One who leaves a thing which attracts children to play with it, in a place where children can get it, thereby creates a situation of active danger; and if the act of the child brings about a catastrophe, it is a proximate result of leaving the thing about.

Defendant left an unlocked push-car near its railroad where children could get at it; a child pushed it on the track and was killed by a train. If the act of a

[*] Risk of freezing in winter: Fox v. Boston & Me. R. R., 148 Mass. 220, 19 N. E. 222 (1889); O. J. Barnes Co. v. Northern Pac. Ry., 173 N. W. (N. D.) 945 (1919). Risk of forest fire in summer: Bell Lumber Co. v. Bayfield T. Ry. Co., 172 N. W. (Wis.) 955 (1919). Risk of chilling livestock: Strother v. Atchison, T. & S. F. Ry., 212 S. W. (Mo. App.) 404 (1919); Smart v. Oregon Short Line R. R., 183 Pac. (Utah) 330 (1919).

child could have been foreseen, defendant is a proximate cause of the death."

This doctrine is the basis of the explosives cases. Defendant gives a child a pistol, explosive cap, or something which by exploding would cause injury, or leaves it in the child's way; he is a proximate cause of any injury the child may do with it, so long as it remains in his hands."

It is to be noticed that if the explosive gets into the hands of an adult the defendant's force has ceased to be an active danger; if the explosive thereafter gets into the hands of a child, defendant is not the proximate cause of anything this child may do with it."

It is often said that where a criminal, or as it is often put, an illegal act of another, intervenes after the defendant's act, the latter ceases to be a proximate cause.

Defendant wrongfully left open a gap in the plaintiff's basement wall: thieves entered and stole plaintiff's goods. Defendant was not a proximate cause."

Defendant wrongfully let a dangerous criminal escape; he was not a proximate cause of the injury done by the criminal, and foreseeable at the time of the escape."

" Pollett v. Illinois Cent. R. R., 288 Ill. 506, 123 N. E. 592 (1919).

" Binford v. Johnston, 82 Ind. 426 (1882); Chaddock v. Plummer, 86 Mich. 225, 50 N. W. 135 (1891); Anderson v. Newport Mining Co., 202 Mich. 204, 168 N. W. 523 (1918); Lathrop v. Bagwell, 206 S. W. (Tex. Civ. App.) 371 (1918). In Hale v. Pacific Tel. & Tel. Co., 183 Pac. (Cal. App.) 280 (1918), the courts said that there was nothing in the evidence to show that the defendant could anticipate that a child would come upon its premises and get the explosive where it was kept; if there were such evidence, the jury might find the result proximate.

" Chaddock v. Plummer, 86 Mich. 225, 50 N. W. 135 (1891); Pittsburg Reduction Co. v. Horton, 87 Ark. 576, 113 S. W. 647 (1908).

" Andrews v. Kinsel, 114 Ga. 330, 40 S. E. 301 (1901).

" Hullinger v. Worrell, 83 Ill. 220 (1876); Henderson v. Dade Coal Co., 100 Ga. 568, 28 S. E. 251 (1897).

This was a principal ground for holding the Cunard Steamship Company not liable for injuries suffered from the sinking of the Lusitania.[100]

In spite, however, of much authority to this effect, the statement must be regarded as exceedingly questionable. If an employee of a storage warehouse should leave a window open, it is submitted that the stealing of the goods would be a proximate result.

In all cases where the act or failure to act of the plaintiff himself was a factor, he might in a civil suit be barred of his recovery by his own contributory negligence. Where this is the case it has often been said that the result is remote. But so to say is to confuse two very different things. That there may be proximate causation, though the injured person is contributorily negligent, is shown in criminal cases, where contributory negligence of the injured person is no bar.

Defendant wounded X's finger; X refused to have the finger amputated, though the surgeon urged it, got lockjaw and died. The death was a proximate result of defendant's act.[101]

A neglect of this principle led to what is submitted is a wrong result. Defendant, a carrier by automobile for hire, negligently failed to stop at plaintiff's house, and plaintiff negligently jumped out of the moving car and was injured. The defense of contributory negligence had been abolished by statute. The court held the injury a remote consequence of defendant's failure to stop.[102]

To sum up the requirements of proximity of result:

1. The defendant must have acted (or failed to act in violation of a duty).

[100] The Lusitania, 251 Fed. 715 (1918).
[101] Reg. v. Holland, 2 Moo. & Rob. 351 (1841).
[102] Dantzler S. & D. D. Co. v. Hurley, 119 Miss. 473, 81 So. 163 (1919).

2. The force thus created must (*a*) have remained active itself or created another *force* which remained active until it directly caused the result; or (*b*) have created a new active *risk* of being acted upon by the active force that caused the result.

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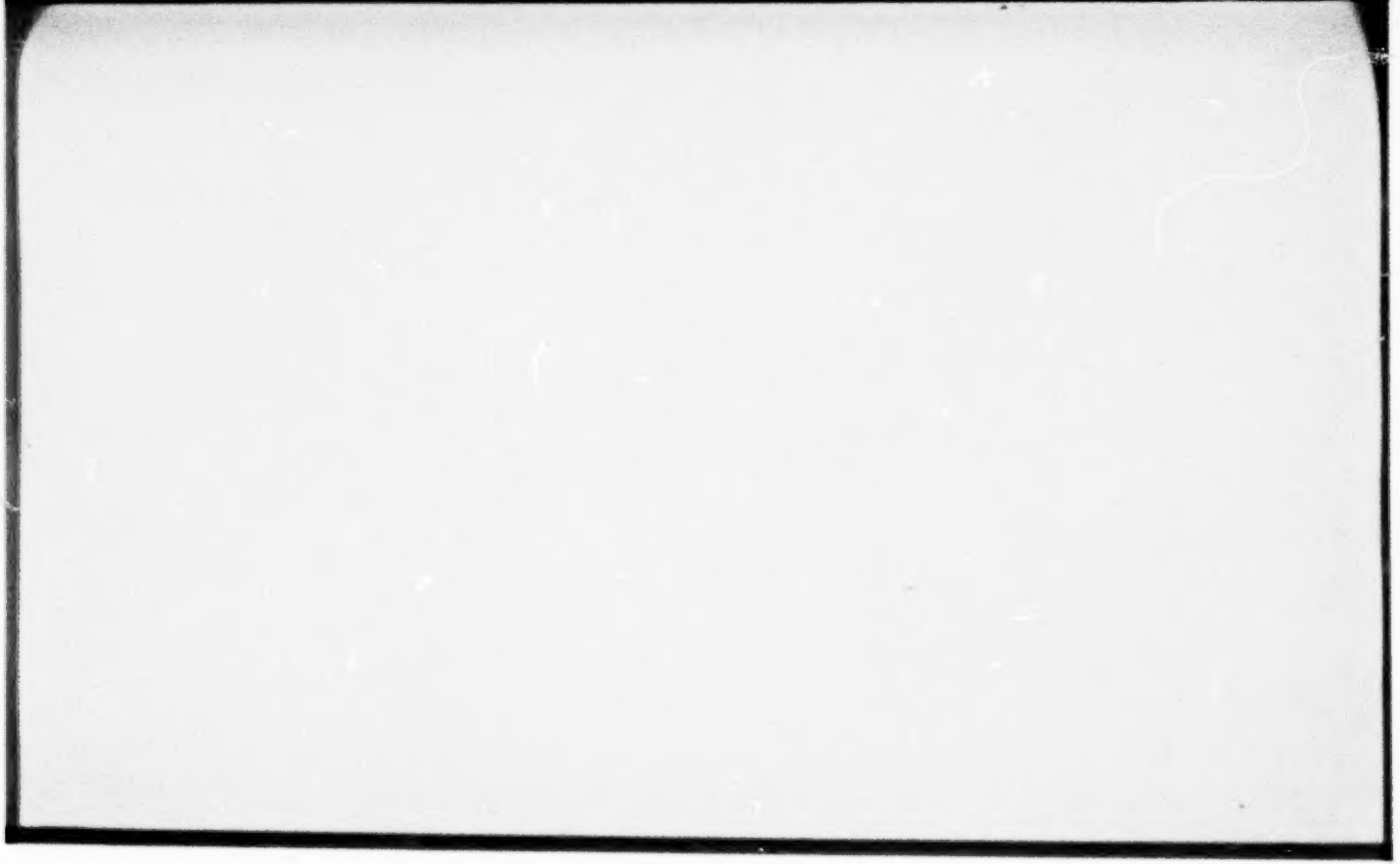


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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 748

HARRY F. SINCLAIR,
HENRY MASON DAY,
WILLIAM J. BURNS,
W. SHERMAN BURNS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Certificate from the Court of Appeals of the District of Columbia.

BRIEF OF APPELLANT HARRY F. SINCLAIR

JURISDICTION

This cause is here for consideration by this court pursuant to the order of this court made under Section 239, Judicial Code, as amended (U. S. C. A.,

tit. 28, Sec. 346), directing that the entire record be sent up by the Court of Appeals of the District of Columbia (R. 871), following a certification by that court of five certain questions upon which it requested instructions by this court (R. 864).

STATEMENT OF THE CASE

The appellant Harry F. Sinclair and the appellants Henry Mason Day, William J. Burns and W. Sherman Burns were tried and convicted in the Supreme Court of the District of Columbia upon a petition which sought to charge the appellants with contempt of court within the meaning of Sec. 268 of the Judicial Code. After hearing, the court adjudged the appellants guilty and sentenced the appellant Harry F. Sinclair to imprisonment in jail for six months (R. 860); the appellant Henry Mason Day to imprisonment in jail for four months (R. 859); the appellant William J. Burns to imprisonment in jail for fifteen days (R. 859), and sentenced the appellant W. Sherman Burns to pay a fine of $1,000 (R. 858). From the judgment of the court, an appeal was taken to the Court of Appeals of the District of Columbia by the respondents below, and argument was had thereon on February 7 and 8, 1929. (R. 863). Thereafter, on February 20, 1929, the Court of Appeals certified five certain questions to this court upon which it requested instructions (R. 864), following which this court on March 8,

1929 (R. 871) directed that the entire record be sent up. The cause is now presented on that record for review and decision by this court.

The statute under which summary proceedings may be had, and punishment administered as and for a contempt of court, is Sec. 268 of the Judicial Code (U. S. C. A., tit. 28, Sec. 385), which provides as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts."

Petition of the United States

The petition of the government alleged that on October 17, 1927, in the Criminal Division of the Supreme Court of the District of Columbia, the case of United States v. Harry F. Sinclair and Albert B. Fall, Criminal No. 43,324, came on for trial before the Honorable Frederick L. Siddons, Associate Justice of said court, and that certain jurors named in

the petition (R. 2) were selected and sworn as jurors. That the government from that time was in course of presenting its evidence in said cause until November 2, 1927, on which last-mentioned date the jury was finally discharged from further consideration of said cause and a mistrial declared because of the fact that sworn charges had been made against juror Edward J. Kidwell, Jr., to the effect that said juror, while the said trial was in progress, to-wit, on the 29th day of October, 1927, outside of the court room and at No. 411 4½ Street, Southwest, in the City of Washington, had made remarks, in the presence and within the hearing of J. Ray Akers and Donald Kay King, concerning his attitude and intended action as a juror aforesaid towards the issues on trial in said cause, and also that there were a large number of operatives of the William J. Burns International Detective Agency, of New York, then engaged in the District of Columbia since October 18, 1927, in a close, intimate, objectionable and improper surveillance and investigation of the jurors and the relatives, neighbors and friends of said jurors. (R. 3).

The petition further alleged that when the jurors were sworn in, on October 18, 1927, the respondent Sinclair directed the respondent Day and the respondent Clark, each of whom was connected with certain corporations which the said respondent Sinclair controlled by stock ownership, to proceed to the City of Washington and to engage the services

of the William J. Burns International Detective Agency and to supervise the operatives of said agency and receive reports and forward the same to respondent Sinclair. (R. 3).

The petition alleged that the object of all of this was

> "To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each or any of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said course, and to influence, pervert, impede, and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert, and prevent the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose." (R. 3, 4).

The petition further alleged the employment of the William J. Burns International Detective Agency by respondent Day, the appearance of fifteen operatives in the employ of the William J.

Burns International Detective Agency in the City of Washington and the assignment of said detectives to the work of shadowing the jurors in said cause and that said duties were performed by said operatives up to and including the 2d day of November, 1927. (R. 4).

The petition further alleged that on November 3, 1927 (after the mistrial had been declared), W. Sherman Burns, an officer of the William J. Burns International Detective Agency, procured the making of a false affidavit purporting to show that a representative of the United States Department of Justice had approached and held conversation with juror Glasscock; and the petition further alleged that respondent William J. Burns and respondent W. Sherman Burns, knowing the falsity of such affidavit, procured the submission of it to Honorable Frederick L. Siddons, Associate Justice of the Supreme Court, intending thereby to provide evidence, such as it was, that the United States of America, through one of its employes, had tampered with said juror in said cause. (R. 5).

The petition further alleged that the operatives investigated encumbrances upon the home of the juror Kern, in the City of Washington, at the direction of Manager Ruddy, and reported in writing the result of their investigation. (R. 5, 6).

The petition further alleged that an investigation was made by the said operatives, under the direction of Manager Ruddy, of the brother and father

of the juror Kidwell, and that reports were made with respect thereto. (R. 6).

Upon the filing of the petition, the court issued a rule against the respondents to show cause why they should not be adjudged in contempt of court. (R. 8).

Answer and Motion to Dismiss, of Respondent Sinclair

The respondent Sinclair, in addition to answering specifically the allegations of the said petition, challenged the legal sufficiency thereof, by way of a motion to dismiss, upon the following grounds:

> "1. The said petition does not allege facts sufficient in law to confer jurisdiction upon this court to adjudge the respondent guilty of contempt.
>
> "2. The said petition fails to allege facts sufficient as matter of law to charge this respondent with contempt of court.
>
> "3. The facts alleged in said petition are insufficient as matter of law to charge misbehavior by this respondent in the presence of the court or so near thereto as to obstruct the due administration of justice.
>
> "4. That said petition does not allege facts showing or even tending to show that the respondent has been guilty of acts or conduct in any wise impeding or tending to impede the due administration of justice.

"5. This court is without jurisdiction to try this respondent or to adjudge him guilty of contempt of this court upon the allegations of said petition.

"6. The court is without jurisdiction to entertain said petition or to make any adjudication thereon, because said petition is lacking in necessary and essential allegations showing that this respondent has been guilty of misbehavior in the presence of the court or so near thereto as to obstruct or impede the due administration of justice." (R. 9).

Specifically answering the petition of the government, respondent Sinclair admitted the fact that the jury had been duly selected and sworn and the case was on trial and the United States was in course of presenting its evidence and it so continued up to and including the 31st day of October, and that on the 2nd day of November, 1927, a mistrial was declared. (R. 9, 10).

Respondent Sinclair further admitted that on the 1st day of November, 1927, certain charges were made by the counsel for the United States, relating to alleged misconduct of juror Kidwell and the alleged activities of certain operatives of the William J. Burns International Detective Agency. (R. 10).

Respondent Sinclair denied the allegations of the petition heretofore quoted with respect to the purpose for which the Burns Detective Agency was employed. (R. 11).

Respondent Sinclair admitted the employment of the William J. Burns International Detective Agency and that he directed respondent Day to give instructions to the said William J. Burns International Detective Agency as to the duties which were to be performed by the operatives of said Agency (R. 12), and that such instructions were that the operatives so employed should receive strict and peremptory instructions that they should not come in contact with, approach or converse with any of the said jurors and should not in anywise molest, interfere with, impede or influence any of the said jurors in the performance of their duties as such. (R. 15).

Respondent Sinclair further answered in this connection that he believed that in cases involving great public interest the government from time to time had kept jurors under surveillance during the time of such trials and that, entertaining such belief that the government of the United States had exercised such right and privilege, he, as a citizen of the United States, had the same right and privilege. (R. 15).

The respondent Sinclair in his answer specifically denied that the employment of the Burns Detective Agency was for any of the improper or corrupt purposes alleged in said petition. (R. 13, 14).

Respondent Sinclair further alleged in his answer that he had every reason to believe and did believe that for the past four years he had been subject to

surveillance by agents, who he believed were employed by the United States Government. That such agents not only shadowed him at his place of business but about his home, and that they had made numerous and extensive examinations of his books, records and documents and bank accounts and had interrogated his employes and pried into all his activities, of whatever nature, in his private and business life. (R. 16).

At the opening of the hearing on the petition and answer, the motion to dismiss the petition for legal insufficiency was presented and fully argued (R. 76) and the court reserved its decision thereon till after the conclusion of all the evidence, whereupon it was overruled. (R. 851).

The Evidence

The trial was a protracted one, beginning on December 5, 1927, and ending on February 21, 1928 (R. 76), and the evidence taken was very voluminous. The evidence in large part consisted of the testimony of the operatives of the Burns Detective Agency, either by way of oral testimony given by the operatives or by way of the reports which they, from time to time, had made during the operations, and related almost entirely to details of their operations in the work of observing the jurors as directed in their employment.

It is not deemed essential to refer at length to the testimony, oral and documentary, covering the details of the shadowing, more than to make brief references to such testimony. The government introduced in evidence the carbon copies of the reports of the operatives of the William J. Burns International Detective Agency, which were seized by the United States Marshal in executing a search warrant issued on the affidavits of government counsel (R. 193, 360). These reports were contained in a book designated as the "History of New York Operation No. 5023," by which designation the shadowing operation was known. (R. 89). The following are the references to the reports in the record:

Operative	*Designated as*	*Record pp.*
Steer	S-81	90-95
Stewart	S-71	95-100
Sullivan	S-70	100-107
O'Neill	O-3	107-111
Merritt	M-20	112-120
Long (McMullin)	L-36	120-127
Knowles	K-37	128-132
Klein	K-27	133-138
Kirby	K-1	138-144
Homerighausen	H-4	145-147
Dwyer	D-9	148-153
Brennan	B-4	153-156
O'Reilly	O-14	157-169
Robbins	X-12	169-174
Ruddy	Phila. Mgr. C. G. R.	175-181

The government also offered documentary evidence in the nature of statements of the expenses of the manager and the several operatives engaged in the work (R. 181-193). Also, original typewritten report of Operative O'Reilly, dated Oct. 30, 1927, which was seized by the United States Marshal when a raid was made on Oct. 31, 1927, upon the apartment of Manager Ruddy at Wardman Park Hotel. (R. 193). Additional report of Operative O'Reilly, O-14, dated Oct. 30, 1927. (R. 195-196). Also, reports of Operative Merritt, M-20, dated Oct. 30, 1927 (R. 196-197); reports of Operative Steer, S-81, dated Oct. 30, and Oct. ——, respectively (R. 198-199); report of Operative Steer, S-81, dated Oct. —— (R. 200-202); report of Operative Steer, S-81, dated Oct. 29, 1927 (R. 202); report of Operative O'Reilly, O-14, dated Oct. 28, 1927, being the report concerning the investigation of the Land Records respecting the property known as No. 1315 North Carolina Avenue, owned by Juror Kern (R. 205); memorandum of information as to automobile license numbers (R. 207-9); reports of Operative Long (McMullin), L-36, dated Oct. 29, 1927 (R. 209-210); additional memorandum of information as to automobile license numbers (R. 211-217); reports of Operative Merritt, M-20, dated Oct. 29, (R. 218-219); report of Operative O'Reilly, O-14, dated Oct. 29, 1927 (R. 221-222); report of Operative Long (McMullin), L-36, dated Oct. 28, (R. 224-225); report of Operative Merritt, M-20, dated

Oct. 28, 1927 (R. 225-226); report of Operative Steer, S-81, dated Oct. 28 (R. 227-229); report of Operative O'Reilly, 0-14, dated Oct. 28, 1927. (R. 230).

The government then introduced in evidence the original handwritten reports of the operatives of the Burns Agency. (R. 232). These reports were introduced by grouping together the reports of all the operatives for each day from the beginning of the operation, on Oct. 18, 1927. (R. 233). The following are references to the reports as they appear in the record:

	Pages
Reports of all operatives covering Oct. 18	233-237
Reports of all operatives covering Oct. 19	237-254
Reports of all operatives covering Oct. 20	254-271
Reports of all operatives covering Oct. 21	271-290
Reports of all operatives covering Oct. 22	290-307
Reports of all operatives covering Oct. 23	308-322
Reports of all operatives covering Oct. 24	322-337
Reports of all operatives covering Oct. 25	338-346
Reports of all operatives covering Oct. 26	347-353
Reports of all operatives covering Oct. 27	353-358

In addition, the government introduced in evidence, duplicate handwritten reports by Operative Merritt, M-20, covering the operations of Oct. 28, 29, and 30, written from memory after the seizure of the records at the Wardman Park Hotel (R. 359-363); and similar reports written by other opera-

tives—by Operative Steer, S-81 (R. 364); Manager Ruddy (R. 365-366); Operative Robbins, X-12 (R. 366-367); Operative Steer, S-81 (R. 369-370); Operative O'Reilly, 0-14. (R. 370-371).

Following this, all of the operatives of the Burns Detective Agency were called to the stand by the government and testified orally as to the details of the operation. The testimony of the said operatives appears in the record as follows:

	Record page
Robbins,	
Direct examination	398-401
Cross-examination	401
O'Reilly,	
Direct	403-428
Cross	428-435
Redirect	435-437
Stewart,	
Direct	437-448
Cross	448-451
Examination by the court	451-452
Recalled	466
Sullivan,	
Direct	452-456
Cross	461-462
Examination by the Court	462-463
Klein,	
Direct	466-474
Cross	474
Merritt,	
Direct	474-479
Cross	479
Examination by the court	480

	Record Page
O'Neill,	
Direct	526-531
Cross	531-532
Examination by the court	532-533
Steer,	
Direct	533-544
Cross	544-546
Dwyer,	
Direct	547-554
Cross	554-555
Redirect	555-556
Homerighausen,	
Direct	562-570
Kirby,	
Direct	570-575
Cross	575
Knowles,	
Direct	576-581
Cross	581-582
Brennan,	
Direct	582-590
Cross	590-591
Redirect	591-592
McMullin (Long),	
Direct	613-628
Cross	628-658

Counsel for the government and for the respondents cooperated fully in condensing this voluminous record with a view of presenting it on appeal in as consise form as possible. Even after counsel had fully cooperated in an effort to condense the bill of exceptions, the record is voluminous. In present-

ing the questions involved in this appeal, we have considered it unnecessary to take extended excerpts from the evidence, but do present a simple statement of the facts from that record which we deem essential to the determination of the questions involved.

Charles G. Ruddy, Manager of the Philadelphia office of the William J. Burns International Detective Agency, called as witness by the government, testified that he was assigned to the duties of coming to Washington in connection with the surveillance of the jury engaged in United States v. Fall and Sinclair; that he arrived in Washington at 10:20 P. M., October 18th and went to 2118 Leroy Place and met the respondent Day (R. 78); that respondent Day handed him a list of the jurors in the Fall-Sinclair case then on trial. (Government Exhibit 1, R. 79-83). The witness Ruddy further testified that,

> "Mr. Day told me that he wanted me to place each of the jurors under surveillance, and that the jurors were to be held as closely as possible outside of the court; that under no circumstances were any of our men to approach any juror; but he wanted to be particularly informed whether our men who were holding the jurors under surveillance found that the jurors were approached by anyone else; and to be careful to take the numbers of any automobiles other than the jurors' that the jurors

> might get into with anybody; and he emphasized that the men were to be careful and instructed that they were not to approach the jurors at any time or in any way." (R. 83).

The witness further testified that before engaging in the work of observing the jury he received instructions from respondent W. Sherman Burns, as follows:

> "Mr. Burns told me to be very careful to see that the men were very careful and instructed that they were not to embarrass jurors in any way, not to permit them to know that they were being shadowed, and if any man disobeyed the instructions he was to be immediately sent back to his respective office." (R. 84).

The witness Ruddy further testified that he communicated to Sherman Burns the instructions he had received from respondent Day, and Sherman Burns told him that the men should not approach or talk to any of the jurors and that he (Burns) had so instructed the men who had already been detailed from the New York office, and that any men disobeying these instructions were to be returned to their respective offices from whence they reported. The witness Ruddy further testified that he told Sherman Burns that respondent Day requested that the jurors be placed under surveillance, that this was purely a surveillance case. (R. 78, 79).

The witness Ruddy further testified:

> "I gave the operatives, including O'Reilly, the same instructions Mr. Burns had given me, that under no circumstances were they to approach a juror, that they were not to speak to the jurors, and in every way possible not to permit the jurors to know that they were being shadowed. * * * I told the operatives that they should not speak to the members of the jury, and I told them they would be dismissed from the service of the Agency if they did speak to them." (R. 379).

Each of the operatives called as a witness by the government testified that he had received instructions from Manager Ruddy substantially as narrated by the witness Ruddy in his testimony.

The witness **O'Reilly** testified:

> "I came here from the New York office. Merritt came with me. Sherman Burns sent me. He told me I was going to Washington to assist Ruddy in the operation of shadowing certain jurors in a case then on trial in Washington. He told me he had given Ruddy certain instructions which he, in turn, was to give the men, and he asked me, upon my arrival, to convey the same message to each man as I interviewed him, as I was acting as contact man between Ruddy and the operatives. He told me I was to carry out the instructions which he also gave

me, that no man under any circumstances was to approach in any way whatsoever any juror being shadowed, or have conversation with, or physical contact with any juror being shadowed. He told me he had given these instructions to Ruddy, and wanted me to carry the same message to each man; and in event of any violation of these instructions by any man, I was to send him immediately back to his office, or report to Ruddy. I told Ruddy that message of Sherman Burns immediately upon meeting him at the Union Station. I was not present when Ruddy gave instructions to the men on the morning of the 19th. Most of the men told me, when I started to refer to the instructions, that Ruddy had already given them, and they had observed them to the letter." (R. 432-33).

The witness **Stewart** testified:

"Ruddy gave instructions to Long (McMullin) and me at the National Hotel the day we came down here. There were general instructions given and each one was handed a slip of paper designating the juror he was to keep under surveillance, and then instructions were given again to that particular man. • • • We were told to hold certain jurors under surveillance and not to talk to any of the jurors and should it become known that we were following them, to drop off immediately. Ruddy said we would be discharged if we established any contact with a juror." (R. 448-49).

The witness **Sullivan** testified:

"It was impressed on the boys to stay away from the jurors, that is, their previous instructions were repeated. The previous instructions were to place the jurors under surveillance and to keep them at a safe distance and under no circumstances approach a juror or talk to him. All the boys were advised at that time that to disobey those instructions would mean discharge from the agency. Ruddy gave those instructions. He did not tell who instructed him to give them. I received my instructions alone but I knew the other boys had been so instructed, as they told me that they had been instructed to keep a safe distance from the jurors and not to speak to any of them or come in contact with any of them.

"All of them may have told me that. I know they all received the same instructions. As a matter of fact I heard them repeated that night up in the room. I do not know of any reason why they were repeated. Nothing had happened that day that would cause them to call all the agents there to repeat those instructions. It was just Ruddy's way of handling a case." (R. 458-59).

The witness **Klein** testified:

"I got my orders from Scanlon. He told me I was to proceed to Washington that night and there meet Ruddy and that I was going down down there with some of the other boys to place

under surveillance the jurors in the Fall-Sinclair case. He told me he was told by Sherman Burns that we were not to approach or attempt to talk to any of the jurors that we would have under surveillance. On two occasions Ruddy instructed the men, first upon arriving and then on that Saturday morning at O'Reilly's room." (R. 474).

The witness **Merritt** testified:

"On October 19, about 2 p. m. Sherman Burns told me to pack my bag and get ready to go to Washington to work on a case under Ruddy's directions. He told me not to talk to any of the subjects in the matter, and to be very careful. • • • At the station Ruddy gave me a slip of paper with a man's name and address and description on it and said that would be my subject. He told me to be very careful and not let the man see me shadow him, and under no circumstances to connect with him." (R. 474-75).

The witness **O'Neill** testified:

"I received instructions from Scanlon in the New York office about 5 p. m. on the 18th that I was to go to Washington. He instructed me that I would go down there and shadow a juror in the Fall-Sinclair case who would be designated to me by Ruddy. He gave me general instructions as he always does that I was to shadow these jurors and under no circum-

stances was I to approach or come anywhere close to a juror at all, and under no condition talk to a juror, and if a juror attempted to approach me, I was to get out of his way as quickly as possible. • • • He (Ruddy) instructed me the same as Scanlon had, only he was more emphatic. He told me under no conditions to approach a juror or to talk to him, and if the juror attempted to talk to me or to approach me to get out of his way immediately, to run if possible." (R. 526-27).

The witness **Steer** testified:

"I was given instructions if any of the operatives ever talked to a juror they would be sent back to New York and dismissed." (R. 544).

The witness **Dwyer** testified:

"Before leaving New York I received instructions from T. A. Scanlon, manager of the New York office. He told me to go home and pack my bag and return to the office, which I did, and when I returned to the office he told me to proceed to Washington with the operatives I have named; that I was going to work on a surveillance job on the Fall-Sinclair jury; that I should not approach any of the jurors I worked on in any way or shadowed, and if I did he would dismiss me from the agency. • • •

"He (Ruddy) said I was not to connect with any of the jurors in any way and if I did I

would be sent back to New York and dismissed." (R. 547).

The witness **Homerighausen** testified:

"Ruddy instructed me to shadow Mr. Costinett, a juror of the Supreme Court. He told me John J. Costinett occupied Chair No. 3, had a tailoring business at 1212 New York Ave., and lived at 1442 Fairmont St. He told me to place him under surveillance and watch him to see who he connected with, and in case he made any connections, to drop him and take up the connections. He said: 'In no case get too close to Costinett, or anything that would cause any suspicion. If you think at any time that he is suspicious or becomes disturbed, why, drop the case altogether. You may drop it at any time you think it is so justified. If at any time you see anything that is suspicious or looks wrong, get in touch with me immediately, no matter what hour of the night it is. Under no conditions must you cause any alarm to the juror or anybody connected with him. These instructions must be carried out. If you do not carry them out, I will send you back to Baltimore and I will recommend your dismissal.' " (R. 562-63).

The witness **Kirby** testified:

"At the National Hotel I was instructed to go to Court and pick up Juror Holt in Seat No. 6 and follow him to see if anybody connected with

him, and if anybody did to drop the subject and follow the man who connected with him and find out who he was and where he went and all about him, and at no time to get in touch with, or to talk with the juror in any respect, and if I did I would be sent back to Baltimore and dismissed." (R. 571).

The witness **Knowles** testified:

"I met Ruddy at the Union Station at 12:23 the morning of the 21st. He instructed me to check in the Pennsylvania Hotel, and the next morning I was to meet O'Reilly, who would give me a designation on my subject. He also instructed me that while I was shadowing this subject in no way to come in contact with him and not to talk to him, and if I was to disobey those instructions I would be sent back to Philadelphia immediately and discharged from the agency." (R. 576-77).

The witness **Brennan** testified:

"Ruddy told me to be very careful. He cautioned me against talking to the juror and in case the juror should suspect I was following him and should ask me why I was following him, I should walk away and not answer him, and act as if I were crazy." (R. 583).

The witness Ruddy testified in substance that from October 20th all of the operatives reported to him

each day; that the reports of the operatives were in their own handwriting, and that the witness Ruddy made copies on the typewriter of the facts in each report, and that the originals of these typewritten reports were given to respondent Day and the witness Ruddy kept the carbons; that the original typewritten reports were sent to Mr. W. Sherman Burns, in New York; that these typewritten reports were made to respondent Day at his residence, 2118 Leroy Place, at times, but generally they were handed to him at the witness Ruddy's apartment at the Wardman Park Hotel; that there was no stated time for the making of these reports but that after the operatives were organized they were generally made between eleven and one o'clock the next day. (R. 85).

Further revealing the circumstances and object of the employment of the Burns Detective Agency, respondent **W. Sherman Burns,** called as a witness in his own behalf, testified that some time during the afternoon of October 18, 1927, he was asked to get in touch with Mr. Day in Washington, which he accordingly did (R. 775-6); that in substance Day had informed him that he would like to have the jurors in the case of the United States Government against Fall and Sinclair shadowed. The respondent, W. Sherman Burns, further testified that he thereupon called in his New York Manager, Scanlon, and discussed with him the selection of the men to be used and told him that it was a surveillance job and he wanted shadow men and that whatever men he,

Burns, could personally see he would instruct them that they were not to come in contact with any jurors or embarrass them in any way, and that if a juror became aware that he was being shadowed the men should walk away and drop the juror, and that if he (Burns) did not see all of the men, that he wished Scanlon to give the instructions himself. Respondent W. Sherman Burns further testified that he selected the witness Ruddy to be put in charge because of his confidence in the ability of Ruddy; that he got in touch with Ruddy by telephone and explained the matter to him and directed Ruddy to meet respondent Day, at an address in Washington which had been given him, and take instructions from respondent Day and that after he had talked with respondent Day to talk with him, respondent Burns, again, because Burns wished to be sure as to the limitations of the work to be done. That Ruddy, pursuant to directions, had called the respondent W. Sherman Burns after Ruddy's interview with respondent Day and informed him that the work to be done was the shadowing of the jury and of the number of men necessary to be employed.

The respondent W. Sherman Burns further testified:

> "I reiterated my previous instructions and told him to also instruct the men when they reported to him the limitation of this work, that it was merely a shadow job, they were not to approach the jurors, embarrass them in any

way, and if any of the men violated those instructions they were to be returned to their respective offices. Ruddy said that we must report any contact with the jurors and nothing else. That was the purpose of the employment." (R. 777).

Further showing the circumstances and purpose of the employment of the Burns Detective Agency, respondent **Day**, called in his own behalf, testified:

"The first conversation that Mr. Sinclair and I ever had upon the subject of shadowing the jury was about 3 P. M. on October 18. It was after the jury had been sworn and had gone on their business for the rest of the day. I was not in court that day. The conversation was after Mr. Sinclair had come back from court. The subject had not been touched on before between us. I had not ever thought of it before. We were at the Mayflower Hotel in Suite 1031, and Mr. Sinclair stated that he was terribly disappointed that the jury had not been locked up, and that he was very much exercised, that some of his enemies, competitors, and those who had written us so many malicious letters might in some way try to influence this jury, and stated he wanted me to tell one of the secretaries to call up Jeffries in New York and ask him to have one of the Burnses communicate with me at a place which would be convenient for me, and that he wanted from 12 to 14 operatives, with a lieutenant and a captain, sent to Wash-

ington to cover those who were sworn as jurors in this case. He said they were to cover these jurors, not to approach them, not to speak to them, not to in any way come in contact with them. They were simply to observe and report any suspicious acts which in their opinion might be done by the respective jurors, or those coming in contact with them, and to report also, if it was feasible, the people who did come in contact with them in a way which the operatives could do without arousing any suspicion. That is the substance of the instructions." (R. 823-24).

Respondent Day then testified as to the manner in which he got in contact with the Burns Detective Agency. (R. 824, 825).

Respondent Day further testified:

> "I told Ruddy that the jury in the Sinclair-Fall case had not been locked up or kept together, and I wanted from 12 to 14 men to keep these jurors under surveillance to see who they came in contact with, to see if there was anything suspicious, that they were not to talk to them, they were not to interfere, they were not in any way to embarrass them. I repeated the instructions which had been given to me relative to this, and I wanted daily reports of these operatives, through Ruddy to me, as to just what took place." (R. 825-6).

The respondent Day further testified that at that time he handed to the witness Ruddy Government

Exhibit 1, containing the list of jurors. (R. 826).

Respondent Day further testified:

> "I was absolutely not authorized or directed by Mr. Sinclair to employ the Burns Agency for any other purpose than those which I have related, that is to say, shadowing of a jury without any kind of contact." (R. 832).

This comprises the substance of all of the testimony respecting the employment of the Burns Detective Agency and the purpose for which it was employed. There is no evidence that any of the operatives of the Burns Detective Agency ever approached, talked with or came in contact with any of the jurors, or that any of the jurors were at any time aware of the fact that any of the operatives so employed were shadowing them.

Evidence of the Jurors

The record discloses that the following persons were selected and sworn as petit jurors in the case of United States v. Harry F. Sinclair and Albert B. Fall:

(1) Annetta L. Bailey, (2) Bernice K. Heaton, (3) Gardner P. Grenfell, (4) William H. Goucher, (5) Conrad J. Herzog, (6) Robert C. Flora, (7) John P. Kern, (8) Bradner W. Holmes, (9) John J. Costinett, (10) Norman L. Glasscock, (11) Edward J. Kidwell, Jr., (12) Charles Holt.

(R. 2).

In the course of the trial of the contempt charges, eight of the jurors were called as witnesses and testified.

The following comprises all the evidence in the record on the question as to whether any of the jurors were aware of the fact that they were being shadowed during the time they were serving as jurors:

Mrs. Annetta L. Bailey (Juror) testified:

"During the time that I was serving as a juror in the Fall-Sinclair case, I recall a certain incident that occurred at noon recess when Miss Heaton and I were in the anteroom next to the court room proper. I could not say for certain what day it was. I believe it was Thursday or Friday before the mistrial. On that occasion, I recall Edward Kidwell, Jr., coming into that room. There was a talk between Kidwell and either Miss Heaton or myself in my presence on the subject of keeping out of trouble. On October 28th or during the time I was serving as a juror in the Fall-Sinclair case I was at the Convention Hall Bowling Alley when was also present a gentleman by the name of Robinson."

Thereupon the following occurred:

"Q. State whether or not on that occasion when you were in the bowling alley, you became aware that certain men were looking at you, watching you, observing you?"

Thereupon the question was objected to on the ground that the evidence is that the shadow-

ing of Mrs. Bailey ceased on October 21st and there is no connection between this incident and any of the respondents; the objection was overruled and an exception duly noted, and the witness continued:

"Yes, I became so aware." (R. 510-511).

William H. Goucher (Juror) testified:

"At no time during the 23rd day of October was I aware of being followed or shadowed by anyone whatever." (R. 771).

Bernice K. Heaton (Juror) testified:

"I recall an incident that occurred while I was a juror in the Fall-Sinclair case when Mrs. Bailey and I were in the anteroom to the court room at the noon recess when Juror Kidwell came into my presence. On that occasion there was a talk between Kidwell and me or Mrs. Bailey, on the subject of keeping out of trouble." (R. 511).

"I was present during the time that the trial was in progress in the conference room of the jurors, when the subject of being watched or shadowed or followed was mentioned or discussed." (R. 512).

Conrad J. Herzog (Juror) testified:

(Mr. O'Reilly stood up in the back of the court room.)

"I am positive I have seen that gentleman here in court. I told Mr. Burkinshaw in his office that I may have seen him, I thought I had seen him when I was a petit juror in the Fall-Sinclair case, but I wasn't positive about our place of business, the Northeast Motor Company. I can't recall the date. At the time I felt that I saw him I was just at the entrance of our shop. He was outside the shop, talking to a mechanic employed by our concern. I did not thereafter talk to that mechanic. I don't know which one it was. I did not see O'Reilly at any other time; except in court. The day that the Burns operatives were brought into Major Gordon's office was the first time I saw O'Reilly after the mistrial. This was a day or two after the mistrial. At that time I said that his face was familiar and it seemed to me that I had seen him about our place of business." (R. 559).

Thereupon the following occurred:

"Q. Now at the time while the case of United States v. Fall and Sinclair was in progress state whether or not you were aware that you were being followed by any one?"

(Objection to question overruled.)

"A. I had a suspicion. I was not aware." (R. 559-560).

"Q. Now, did that suspicion have to do with any particular incident that took place during the trial?"

(Objection to question overruled.)

"A. I was after leaving court here for luncheon I was driving home. I noticed a car driving slowly back of me. And when I stopped at

the house I made a turn and faced the west and this car stopped on the opposite side of the street facing east. And I entered the house and looked back and saw the man sitting in the car. I waited for a while and he remained in the car, and finally I went to my lunch, and when I came out I didn't notice whether the car was there or whether he had gone." (R. 560).

"I am not sure that it was O'Reilly that I saw down in front of my place. It was when the Burns operatives were paraded before me in the District Attorney's office that I told Burkinshaw about O'Reilly. I cannot identify the man that I saw in the automobile that came up and stopped. I could not identify him if I saw him again. The different agents of the Burns people were brought in the room where the jurors were, and Burkinshaw asked me and the rest of the jurors to watch them closely and see whether or not I could identify any one of them." (R. 561).

Edward J. Kidwell, Jr. (Juror) testified:

"I do not remember seeing either Ruddy, O'Reilly, Klein or Stewart at any time during the trial of Fall and Sinclair. I don't remember seeing any of those men around the courthouse grounds or in the courthouse while I was a juror. I don't remember ever seeing Merritt in the courtroom. I don't remember seeing him ever except that one time at the corner of 5th and G." (R. 487).

"On occasions of going in and out of the court house I never saw any of the Burns Agents that I know of; if they were there I didn't know who they were; I never at any time during the jury trial saw men whom I now know are Burns Agents. (Thereupon McMullen was asked to stand up). I never saw McMullen during that trial that I know of." (R. 488).

"Q. Do you recall an occasion, when you were serving as a petit juror, that there was a talk among the jurors on the subject of being watched or being shadowed? Do you remember such an incident?"

(Objection to question overruled).

"A. Yes.

"Q. When was that?

"A. I cannot say the exact time. It was some time during the trial.

"Q. Can you tell us about how long either before the mistrial was declared or how long after the trial started?

"A. I think it was about two weeks after the trial started or something like that.

"Q. And where did it occur?

"A. In the jury room.

"Q. What do you mean by the jury room—the consultation room?"

(Objection to question overruled).

"By jury room I mean the first room on the east side of the corridor of this floor, where the jurors assembled."

"Q. Now, to the best of your recollection, what jurors were present on that occasion?"

(Objection to question overruled).

"I don't know exactly who was present. There were about 6 or 8, or probably more. I think it was one morning that we were sent out into the jury room during an argument on a question of law. Jurors Herzog, Holmes and Kern were there." (R. 498-99).

It will thus be seen that only five of the jurors were interrogated with respect to the question as to whether they or any of them were aware of the fact that they were being shadowed during the time they were serving as jurors, and none of them testified that they were so aware. The following jurors, although called as witnesses and testifying in the case, were not asked any questions as to whether they were aware of the fact that they were being shadowed at the time they were serving as jurors: Norman L. Glasscock (R. 658-660); Gardner P. Grenfell (R. 557-559); John P. Kern (R. 556-557).

The following jurors were not called as witnesses: John J. Costinett, Robert C. Flora, Bradner W. Holmes and Charles Holt; and there is no evidence in the record from any source that any one of them was aware of the fact that they were being shadowed while serving as jurors.

Motions to Dismiss

When the government rested its case (R. 696), the respondents then severally moved that the rule upon the respondents be discharged and the petition

dismissed, on the ground already stated in the motion to dismiss when the sufficiency of the petition was questioned, and on the further ground that none of the allegations of the purposes and designs alleged in the petition were at all supported by any evidence introduced by the government; on the ground that there was not a scintilla of evidence showing that anybody proceeding from any of the respondents ever came in contact with a juror or ever approached a juror, or ever conversed with a juror, or ever sought to approach or converse with a juror, or that a single juror was ever conscious of being shadowed; on the ground that no act of respondents obstructed or directly tended to obstruct the administration of justice; on the ground that the government had undertaken to charge the respondents with a conspiracy to commit a criminal offense and therefore there was a variance; on the ground that shadowing *per se* is not a violation of the law, and therefore not contempt of court; on the ground that the submission of the McMullin affidavit was not contempt of court, because there was no trial then pending and nothing was asked to be done with it; on the ground that this prosecution is based on Section 135 of the Penal Code.

This motion was overruled and an exception duly noted by each respondent. (R. 698).

It is obvious that the petition of the government rested upon the theory that the respondents had violated Section 135 of the United States Penal Code,

and that this in and of itself constituted a contempt of court, without regard to the question as to whether the acts done by the respondents or any one acting for them obstructed the administration of justice, or had a direct tendency to obstruct justice. This is disclosed by the argument made by the District Attorney on the motion of the respondents to dismiss the petition and discharge the rule. He said:

> "I have in mind Section 135 of the Federal Penal Code. And an act which would violate Section 135 of the Federal Penal Code, while indictable under that section, if the Court sees fit, if it is committed in its presence or so near thereto as to obstruct the due administration of justice, that would be contempt of the court of which the Court would have the power and the jurisdiction to cite the persons so offending and hold them for contempt and punish them for contempt in a summary way." (R. 77).

After quoting Section 135 of the United States Penal Code, the District Attorney concluded:

> "The petition sought to bring to the Court's attention the acts of these respondents as a contempt of Court, for doing acts that the Government considered was a violation of the language of that section, and hence a contempt of Court." (R. 78).

Again at the conclusion of the whole case, the respondents severally moved the court to discharge the

rule and dismiss the petition, which motion the court overruled, to which ruling the respondents severally excepted. (R. 842).

The court thereupon adjudged the respondents guilty of contempt (R. 842, 855), concluding his judgment in the following language:

> "I cannot escape the conviction, therefore, that respondent Sinclair, respondent Day, respondent Sherman Burns, and respondent W. J. Burns, have been, perhaps in different degrees, all involved, more or less directly involved, in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this Court. If it had not been for that surveillance from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publication of the affidavit regarding it, but at least in part, necessitated a mistrial." (R. 854-55).

Thereupon the trial court imposed upon the respondent Sinclair a sentence to imprisonment for six months in the Washington Asylum and Jail, (R. 860); from the judgment of the Court finding the respondent guilty of contempt and imposing the sentence, the respondent Sinclair noted an appeal to the Court of Appeals, and the case is now here for review by this court pursuant to its order directing that the whole record be sent up.

POINTS TO BE DISCUSSED ON THIS BRIEF

Point I.

The Trial Court Erred in Denying the Motion of the Respondents to Dismiss the Petition of the United States and Discharge the Rule to Show Cause.

The reasons to be urged in support of the proposition that the court erred in denying the motion of the respondents to dismiss the petition are:

1. The said petition does not allege facts sufficient in law to confer jurisdiction upon this court to adjudge the respondent guilty of contempt.

2. The said petition fails to allege facts sufficient as matter of law to charge this respondent with contempt of court.

3. The facts alleged in said petition are insufficient as matter of law to charge misbehavior by this respondent in the presence of the court or so near thereto as to obstruct the due administration of justice.

4. The said petition does not allege facts showing or even tending to show that the respondent has been guilty of acts or conduct in any wise impeding or tending to impede the due administration of justice.

5. This court is without jurisdiction to try this respondent or to adjudge him guilty of contempt of this court upon the allegation of said petition.

6. The court is without jurisdiction to entertain said petition or to make any adjudication thereon, because said petition is lacking in necessary and essential allegations showing that this respondent has been guilty of misbehavior in the presence of the court or so near thereto as to obstruct or impede the due administration of justice. (R. 9).

Under this point assignment of error No. 1 (R. 46-47) will be discussed.

Point II.

The Trial Court Erred in Denying the Motion of the Respondents to Dismiss the Petition and Discharge the Rule at the Close of the Case in Chief of the United States.

The reasons to be urged in support of the proposition that the court erred in denying the motion of the respondents are the reasons set forth under Point I and the following additional reasons:

(a) The evidence offered by the United States was insufficient as matter of law to establish the charge of contempt of court.

(b) None of the allegations of purpose or design alleged in the petition were at all supported by any evidence introduced by the United States.

(c) There was not a scintilla of evidence showing that any person proceeding from or connected with

any of the respondents ever came in contact with a juror, ever approached a juror, ever conversed with a juror, or ever sought to approach or converse with a juror; or that a single juror was ever conscious of being shadowed.

(d) No act of respondents obstructed or directly or indirectly tended to obstruct the administration of justice.

(e) By the petition filed in the cause the United States had undertaken to charge the respondents with a conspiracy to commit a criminal contempt and there was a variance between the allegation of said petition and the evidence offered by the United States in support thereof.

(f) Jury shadowing *per se* is not a violation of law, and therefore not a contempt of court.

(g) The submission of the McMullin affidavit was not contempt of court and could not be contempt of court as there was no trial then pending, and no action was requested with respect to said affidavit.

(h) In and by said petition the United States undertook the prosecution of the respondents for a criminal offense, based upon Section 135 of the United States Penal Code.

Under this point assignment of error No. 2 (R. 47-48) will be discussed.

Point III.

The Trial Court Erred in Denying the Motion of Respondents to Dismiss the Petition and Discharge the Rule at the Close of the Whole Evidence.

The reasons to be urged in support of the proposition that the court erred in denying the motion of the respondents are the reasons set forth under Point II.

Under this point assignment of error No. 3 (R. 48) will be discussed.

Point IV.

The Trial Court Erred in Adjudging the Respondents Guilty of Contempt and in Holding That the Acts of the Respondents Obstructed or Tended to Obstruct the Due Administration of Justice.

Under this point the following assignments of error will be discussed:

4. The court erred in making conclusions of law in finding the respondent guilty of contempt.

5. The court erred in making findings of fact in determining the respondent guilty of contempt of court.

6. The court erred in adjudging the respondent guilty of contempt.

7. The court erred in not adjudging that the acts done by the respondent Harry F. Sinclair, or those

acts authorized by him to be done, neither obstructed nor tended to obstruct the due administration of justice so as to constitute contempt of court. (R. 48).

Point V.

The Trial Court Erred in Excluding Evidence Offered by the Respondents to Show That for a Number of Years It Had Been the Usage and Custom of the United States Government, in Cases Being Prosecuted by the United States in the Various Circuits Throughout the United States to Have the Agents of the Bureau of Investigation of the Department of Justice Actually to Shadow Jurors While They Were Serving as Jurors in Such Cases.

Under this point assignments of error 13 to 57, inclusive, will be discussed. (R. 49-60).

Point VI.

The Trial Court Erred in Excluding Evidence Offered by the Respondents to Show That the Respondent Day Knew That It Was the Custom and Practice of the United States to Have Representatives of the Department of Justice Shadow Jurors Actually Serving in the Trial of Cases Prosecuted by the United States in the Federal Courts in New York.

Under this point assignments of error 59 to 62, inclusive, will be discussed. (R. 60-61).

Point VII.

The Trial Court Erred in Excluding Evidence Offered by the Respondents to Show What the Witness O'Reilly Actually Said on the Occasion of His Visit to the Home and the Barber Shop of the Father of the Juror Kidwell.

Under this point assignments of error 63 to 68, inclusive, will be discussed. (R. 61, 62).

Point VIII.

The Trial Court Erred in Receiving Over the Objections of the Respondents Evidence by the Witness Kidwell, Jr., of Conversations with an Unidentified Man in the Museum Grounds and at the Door of the Court House.

Under this point assignments of error 69 and 70 will be discussed. (R. 62, 63).

Point IX.

The Trial Court Erred in Receiving Over the Objection of the Respondents Evidence of the Witnesses Kidwell, Jr., and Heaton as to Conversations Among the Jurors.

Under this point assignments of error 72, 73, 74, 75 (R. 63), and assignment of error 82 (R. 64) will be discussed.

Point X.

The Trial Court Erred in Receiving Over the Objection of the Respondents Evidence of the Witnesses Kidwell, Jr., and His Mother, Mary Pearl Kidwell, as to Conversations Between the Juror Kidwell and His Mother and Father During the Time He Was Serving upon the Jury.

Under this point assignments of error 76 to 81, inclusive, will be discussed. (R. 63, 64).

ARGUMENT

Points I, II, III and IV.

(1) The Trial Court Erred in Denying the Motion of the Respondents to Dismiss the Petition of the United States and Discharge the Rule to Show Cause; (2) The Trial Court Erred in Denying the Motion of the Respondents to Dismiss the Petition and Discharge the Rule at the Close of the Case in Chief of the United States; (3) The Trial Court Erred in Denying the Motion of Respondents to Dismiss the Petition and Discharge the Rule at the Close of the Whole Evidence; (4) The Trial Court Erred in Adjudging the Respondents Guilty of Contempt and in Holding That the Acts of the Respondents Obstructed or Tended to Obstruct the Due Administration of Justice.

These four points will be argued together.

The fundamental fact to be borne in mind in the consideration of these points is that there is no evidence that any of the operatives of the Burns Detective Agency ever approached, talked with, or came in contact with any of the jurors, or that any of the jurors were at any time aware of the fact that any of the operatives so employed were shadowing them. The record will be searched in vain for any evidence that shows that anyone acting for any of the respondents ever came in contact with a juror, ever approached a juror, ever conversed with a juror, ever sought to approach or converse with a juror, or that any juror was ever conscious of the fact that anyone representing any of the respondents was shadowing or holding under surveillance any of the jurors. So that we start with this clear proposition: Is the shadowing of a jury under these circumstances a contempt of court?

The legal question, freed of every other consideration and stated in its simplest form, is: Did the court have the power to punish for contempt in the absence of evidence showing an obstruction of justice, or acts done having a direct tendency to obstruct justice? It is not a question of the rights of the respondent Sinclair to employ the Burns Detective Agency to shadow the jury. Neither is it a question of the intent of respondents with respect to any act which the record shows that they or any of them did. It is not a question of a violation of a statute

by any or all of the respondents. It does not involve any question of motive or design which any or all of the respondents may have had. It does not involve the wisdom or propriety of any of the acts of respondents. The sole question and the one indispensable to enable the court to act in adjudging respondents guilty of contempt, is: Did any act or acts for which these respondents are responsible obstruct or tend directly to obstruct the administration of justice?

The language of the statute under which this proceeding was instituted is (Sec. 268, Judicial Code), (U. S. C. A., tit. 28, Sec. 385); "The said courts shall have power * * * to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: Provided, That such power to punish for contempts shall not be extended to any cases except the misbehaviour of any person in their presence or so near thereto as to obstruct the administration of justice"; and it has been held by this court (*Toledo Newspaper Co.* v. *United States*, 247 U. S. 402) that this provision conferred no power not already granted and imposed no limitation not already existing. Congress did no more in the statute than to guarantee to the courts that which they had theretofore possessed, that is, the right of self-preservation, and this guarantee was secured by a deposit of power in the courts in their very creation and confirmed by the statute. That power cannot be used or brought into play unless and until an act is

done which obstructs or directly tends to obstruct the administration of justice, and the power to hold and punish for contempt cannot be exercised legally until such an act of obstruction or such an act which tends directly to obstruct has been proved to have been done by the person accused. There can be no claim, based upon the facts shown in the record herein, that there was any obstruction of justice; but it has been said that the shadowing of the jury, as shown by the facts in this record, had an indirect tendency to obstruct the administration of justice. This, we say, falls far short of an act necessary to enable the court to exercise the power to punish for contempt. Moreover, we confidently assert that the facts as to the shadowing clearly demonstrate that there was neither a direct nor an indirect tendency to obstruct the administration of justice. The very nature of the act of shadowing itself has no tendency of any character or kind which could or would reach the jury or the person shadowed. The very limitations of the shadowing, as shown by the evidence, take from it any tendency to reach or come in contact with the jury. A tendency is that which, if not arrested, leads to some place. It is foreordained in the very nature of shadowing and surveillance, that the knowledge of it shall never reach the shadowed person. The record in this case shows that the shadowing, thus limited, or the knowledge of it, never reached or touched the consciousness of any of the jurors; that it was a case of simple shadowing,

which in and of itself refutes any claim of tendency toward contact with the jury.

The trial court fell into the error of resting the question of whether the acts done by the respondents and those acting for them, as shown by the evidence, constituted contempt of court, upon the determination of the right of the respondents to shadow the jurors, rather than upon the question of the power of the court to punish for contempt, in the absence of evidence showing an obstruction of justice or acts done having a direct tendency to obstruct justice. The trial court, in finding the respondents guilty of contempt, held that the mere shadowing of the jurors, without more, warranted such holding. In the course of the decision the trial court said:

> "I can only see in the assertion and in the exercise of a right such as this one that makes almost inevitably and in and of itself when exercised an obstruction to the administration of justice." (R. 846).

Again, the court said:

> "I can only see in the right claimed and to the extent as claimed and exercised in this case an obstruction of justice, and I am not able to follow the contention made here that before you can judicially denounce it as offending against the law, that the obstruction of justice must have been accomplished." (R. 847).

The court, in conclusion, said:

> "• • • I cannot escape the conviction, therefore, that respondent Sinclair, respondent Day, respondent Sherman Burns and respondent W. J. Burns, have been, perhaps in different degrees, all involved, more or less directly involved, in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this Court." (R. 855).

We maintain: First, that this is simply a question of power of a court to hold and punish for contempt; second, that the right to exercise legally that power does not arise unless and until it is established by the evidence that the person accused has done some act or acts which obstruct or directly tend to obstruct the administration of justice; third, that, before the act or acts complained of can be said to have obstructed or directly tended to obstruct the administration of justice, the evidence must show that the act or acts complained of operated upon or influenced the minds of a juror or had a direct tendency to do so. The principles of law applicable to these propositions fall within a very narrow compass.

Contempt of court is a conclusion of law from acts. The petition here does not allege, and the evidence does not support a finding, that respondent Sinclair committed any act which might lawfully

invoke the exercise by the trial court of its power to punish for contempt. Let us first inquire into what such power consists of.

Regardless of what otherwise might be the inherent power of a court to punish for contempt, it is now definitely settled that the power of the lower federal courts is defined and limited by Section 268 of the Judicial Code (R. S. Sec. 725; U. S. C. A., tit. 28, Sec. 385) which reads as follows:

> "Sec. 268. (ADMINISTRATION OF OATHS; CONTEMPTS.) The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (36 Stat. L. 1163)."

This section was originally enacted as Section 1 of "An Act Declaratory of the Law Concerning Contempts of Court," approved March 2, 1831. The Act of 1831 also contained as Section 2 the following (4 Stat. L. 488):

"Sec. 2. *And be it further enacted,* That if any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly, or by threats or force, obstruct, or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons, so offending, shall be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished, by fine not exceeding five hundred dollars, or by imprisonment, not exceeding three months, or both, according to the nature and aggravation of the offense."

The above Section 2 of the Act of 1831 is, now slightly changed, Section 135 of the Federal Penal Code which reads as follows:

"Sec. 135. (INTIMIDATION OR CORRUPTION OF WITNESS OR GRAND OR PETIT JUROR OR OFFICER.) Whoever corruptly or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such commis-

sioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. (35 Stat. L. 1113.)"

In *Ex Parte Robinson*, 19 Wall. 505, in speaking of the Act of 1831 this court said (p. 509):

"The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the Act of Congress of March 2, 1831. 4 Stat. at L., 487. The Act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution may, perhaps, be a matter of doubt, but that it applies to the circuit and district courts there can be no question. These courts were created by Act of Congress. Their powers and duties depend upon the Act calling them into existence or subsequent Acts extending or limiting their jurisdiction. *The Act of 1831 is, therefore, to*

them, the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: (1) *Where there has been misbehavior of a person in the presence of the courts or so near thereto as to obstruct the administration of justice;* (2) where there has been misbehavior of any officer of the courts in his official transactions; and (3) where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts. As thus seen, the power of these courts in the punishments of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments and processes." (Italics ours).

And in the very recent case of *Michaelson* v. *United States*, 266 U. S. 42, this court in holding that a provision of the Clayton Act giving a right to trial by jury in cases of proceedings for contempt in violation of injunctions by acts which are also criminal is not unconstitutional, said (p. 65):

"But it is contended that the statute materially interferes with the inherent power of the courts, and is therefore invalid. That the power to punish for contempts is inherent in all courts has been many times decided and may be re-

garded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior Federal courts are concerned, however, it is not beyond the authority of Congress (Ex parte Robinson, 19 Wall. 505, 510, 511, 22 L. Ed. 205, 208; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326, 48 L. Ed. 997, 1001, 24 Sup. Ct. Rep. 665); but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, and is, in express terms, carefully limited to the cases of contempt specifically defined."

No one will contend that the Supreme Court of the District of Columbia has any power to punish for contempt of court other or greater than that enjoyed by the lower federal courts. *Ex parte Bradley*, 7 Wall. 364.

The question involved in this appeal is therefore whether the petition alleges and the evidence supports a finding that respondent Sinclair was guilty of misbehavior in the presence of the court below "or so near thereto as to obstruct the administration of justice." It will be helpful in reaching a right conclusion to inquire at the outset into the *rationale* of the power.

In *Marshall* v. *Gordon*, 243 U. S. 521, this court held that the power of Congress to deal directly by way of contempt without criminal prosecution was implied from the constitutional grant of legislative power to Congress in so far, and so far only, as such authority is necessary to preserve and to carry out the legislative power granted. Chief Justice WHITE, speaking for the court, said (p. 541):

> "The power is therefore but a force implied to bring into existence the conditions to which constitutional limitations apply. It is a means to an end, and not the end itself. Hence it rests solely upon the *right of self-preservation* to enable the public powers given to be exerted." (Italics ours).

Again, the court said (p. 546):

> "The conclusions which we have stated bring about a concordant operation of all the powers of the legislative and judicial departments of the government, express or implied, as contemplated by the Constitution. And as this is

considered, the reverent thought may not be repressed that the result is due to the wise foresight of the fathers, manifested in state constitutions even before the adoption of the Constitution of the United States, by which they substituted for the intermingling of the legislative and judicial power to deal with contempt as it existed in the House of Commons a system permitting the dealing with that subject in such a way as to prevent the obstruction of the legislative powers granted and secure their free exertion, and yet, at the same time, not substantially interfere with the great guaranties and limitations concerning the exertion of the power to criminally punish—a beneficient result which additionally arises from the golden silence by which the framers of the Constitution left the subject to be controlled by the implication of authority resulting from the powers granted."

In the case of *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402, this court extended the doctrine of the *Marshall Case*, *supra*, to the power of the courts to punish for criminal contempt. Chief Justice WHITE, speaking for the court, said (p. 416):

"1. Section 268 of the Judicial Code and its forerunner, the Act of 1831.

"It is essential to recall the situation existing at the time of the adoption of the Act of 1831 in order to elucidate its provisions. In Marshall v. Gordon, 243 U. S. 521, 61 L. Ed. 881, L. R.

A. 1917F, 279, 37 Sup. Ct. Rep. 448, the power of Congress to summarily punish for contempt came under consideration and it was there pointed out that the enlarged legislative power on that subject which prevailed in England prior to the separation, whether based upon the commingling of legislative and judicial authority or upon any other cause, was necessarily in this country greatly restricted and changed by the effect of the adoption of the Constitution and the operation of the division of powers and the guaranties and limitations which that instrument embodied. Considering this condition in the light of the colonial legislation on the subject and the previous state Constitutions, it was pointed out that it had come to be established, either by express constitutional or legislative provisions or by inevitable implications resting upon the very existence of government, that while the limitations as to mode of accusation of crime and methods of trial had fundamentally changed the situation which had previously existed, such change had not deprived the legislative power of the right, irrespective of its authority by legislation to provide for the trial and punishment of criminal acts, in addition to summarily deal by way of contempt proceedings with wrongful acts obstructing the legislative power in the performance of its duty. This authority, it was held, was but an incident of the powers conferred, and indeed that its exertion in ultimate analysis was a means of securing the effective operation of the constitutional limitations as to mode of accusa-

tion and methods of trial. It was pointed out that the authority thus recognized automatimatically inhered in the government created by the Constitution, was sanctioned by a long line of judicial decisions and by state and federal practice, although the legislative power, doubtless as a mere consequence of a reminiscence of what had gone before, and momentarily forgetful of the limitations resulting from the Constitution, had sometimes exerted authority in excess of that which it was decided was really possessed.

"While the Marshall case concerned the exercise of legislative power to deal with contempt, the fundamental principles which its solution involved are here applicable to the extent that they may not be inapposite because of the distinction between legislative and judicial power. Indeed, the identity of the constitutional principles applicable to the two cases, subject to the differences referred to, was pointed out on pages 542 and 543, where it was said: 'So, also, when the difference between the judicial and legislative powers is considered and the divergent elements which, in the nature of things, enter into the determination of what is self-preservation in the two cases, the same result is established by the statutory provisions dealing with the judicial authority to summarily punish for contempt; that is, without resorting to the modes of trial required by constitutional limitations or otherwise for substantive offenses under the criminal law. Act of March 2, 1831, 4 Stat. at L. 487, chap. 99, Comp. Stat. 1916, Sec. 1245.'

"The pertinent provision of Sec. 268 of the Judicial Code is as follows: 'The said courts (United States courts) shall have power * * * to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority; Provided, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice * * *.'

"Clarified by the matters expounded and the ruling made in the Marshall case there can be no doubt that the provision conferred no power not already granted and imposed no limitations not already existing. In other words, it served but to plainly mark the boundaries of the existing authority resulting from and controlled by the grants which the Constitution made and the limitations which it imposed. And this is not at all modified by conceding that the provision was intended to prevent the danger by reminiscence of what had gone before of attempts to exercise a power not possessed, which, as pointed out in the Marshall case, had been sometimes done in the exercise of legislative power. The provision, therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power

given by summarily treating such acts as a contempt and punishing accordingly. *The test, therefore, is the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty*—a conclusion which necessarily sustains the view of the statute taken by the courts below and brings us to the second question, which is:" * * * (Italics ours).

Again, in the *Toledo Newspaper Case, supra*, the court said (p. 414):

"Condensing, for the sake of brevity, and looking at the substance of things, these conclusions of the court embraced four grounds: (a) Because, leaving aside the attempted ridicule, not to say vituperation, concerning the court, which was expressly or impliedly contained in the publications, their manifest purpose was to create the impression on the mind of the court that it could not decide in the matter before it in any but the one way without giving rise to such a state of suspicion as to the integrity or fairness of its purpose and motives as might engender a shrinking from so doing. (b) Because the publications directly tended to incite to such a condition of the public mind as would leave no room for doubt that if the court, acting according to its convictions, awarded relief, it would be subject to such odium and hatred as to restrain it from doing so. (c) Because the publications also obviously were intended to produce the impression that any order which might be rendered by the court in the dis-

charge of its duty, if not in accord with the conceptions which the publications were sustaining, would be disregarded and cause a shrinking from performing duty to avoid the turmoil and violence which the publications, it may be only by covert insinuation, but none the less assuredly, invited. And (d) because the publications were of a character, not merely because of their intemperance, but because of their general tendency, to produce in the popular mind a condition which would give rise to a purpose in practice to refuse to respect any order which the court might render if it conflicted with the supposed rights of the city espoused by the publications."

With reference to the contention of counsel, the court said (247 U. S. 420):

"3. The contention that there was no evidence whatever to justify attributing to the publications the consequence of obstruction and therefore no legal basis for the conclusion of guilt and resulting right to impose penalties.

"It is to be observed that our power in disposing of this objection is not to test divergent contentions as to the weight of the evidence, but simply to consider the legal question whether the evidentiary facts found had any reasonable tendency to sustain the general conclusions of fact based upon them by the courts below. Considering the subject in this aspect again we are constrained to say that the contention on the face of the record is too plainly devoid of merit

to require any detailed review. Indeed, we are of opinion that the court below was right in saying, concerning the ultimate conclusions of fact upon which its action was based, that it was 'difficult to see how any other findings could have been made.' True, it is urged that although the matters which were made the basis of the findings were published at the place where the proceedings were pending and under the circumstances which we have stated, in a daily paper having a large circulation, as it was not shown that they had been seen by the presiding judge or had been circulated in the court room, they did and could form no basis for an inference of guilt. But the situation is controlled by the reasonable tendencies of the acts done, and not by extreme and substantially impossible assumptions on the subject. Again, it is said there is no proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by the publications, and therefore there was no proof tending to show the wrong complained of. But here again, not the influence upon the mind of the particular judge is the criterion, but the reasonable tendency of the acts done to influence or bring about the baleful result is the test. In other words, having regard to the powers conferred, to the protection of society, to the honest and fair administration of justice, and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of

> how far they may have been without influence in a particular case. The wrongdoer may not be heard to try the power of the judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

Government counsel, in the trial court and in the Court of Appeals of the District of Columbia, relied upon the *Toledo Newspaper Case, supra*, in support of the contention that there may be a contempt of court even though the persons engaged in the shadowing of the jury did not approach, come in contact with, or in any manner impede or interfere with the jurors in the performance of their duties. Government counsel argue that this court sustained the conviction in the *Toledo Newspaper Case, supra*, although the defamatory publications "never reached the eyes or attention of Judge Killits, nor were the newspapers carrying such matters ever circulated in the courtroom." In taking this position, government counsel wholly misconceive the facts in the *Toledo Newspaper Case*. The record in that case in this court discloses that the contempt proceedings were initiated by Judge Killits making an order directing the United States Attorney to file an information charging contempt. In the order made by the court, it is recited "*Whereas there have come to the attention of the judge of this court as a daily reader of the newspaper published*," etc. (*Toledo Newspaper Case*, record p. 2). The record

in that case further discloses that the order made by the court directing the United States Attorney to prepare and file the information was offered and received in evidence. (*Toledo Newspaper Case*, record p. 231). In the opinion of Judge Killits, in the United States District Court (220 Fed. 458, 509), it is said: "*Besides, the order for an information, offered and received in evidence without objection, recites that each of the publications was seen by the judge as a daily reader of the News Bee.*" (Italics ours.) It was in the light of this state of the record that this court rejected the contention of counsel that there was no evidence to show that the objectionable publications were brought to the attention of Judge Killits.

We think a fair statement of the *Toledo Newspaper Company* decision is found in *Coll* v. *United States*, 8 F. (2d) 20, 23, wherein the Circuit Court of Appeals for the First Circuit said:

> "The only decision of the Supreme Court, which even arguably lends any support to the Government's contention, is Toledo Newspaper Co. v. United States, 247 U. S. 402, 38 S. Ct. 560, 62 L. Ed. 1186. In that case a bare majority of the Supreme Court held that the District Court might punish as contempt newspaper publications concerning injunction proceedings, tending under the circumstances to create the impression that a particular decision would evoke public suspicion of the judge's integrity and fairness, and bring him into public

odium, and would be met by public resistance, and also tending, under the circumstances, to provoke such resistance in fact. But that case on the facts is plainly distinguishable from the one at bar. See the elaborate review of the facts by the District Court in 220 F. 458, and in the Court of Appeals in 237 F. 986."

That the language used by this court in the *Toledo Newspaper Company Case, supra*, is strongly colored by the facts in that particular case is obvious from the later case of *Ex Parte Hudgings*, 249 U. S. 378, where the court again speaking through Chief Justice WHITE, emphasized the importance of "*the further element of obstruction to the court in the performance of its duty.*" (Italics ours). In that case a witness had been committed for contempt on the ground that in the opinion of the trial judge he was testifying falsely as to his ability to identify a certain handwriting. This court held that the case was of such a character as to be an exception to the rule of procedure that other available sources of judicial power may not be passed by for the purpose of obtaining relief by resort to the original jurisdiction of the court, and that they should finally dispose of the questions in the proceedings for habeas corpus, and ordered that the petitioner be discharged from custody under his commitment for contempt. The court said (p. 382):

"That the contumacious refusal of a witness to testify may so directly obstruct a court in the

performance of its duty as to justify punishment for contempt is so well settled as to need only statement. Despite some confusion caused by certain ambiguous forms of expression used by the court below in dealing with the subject, it is indisputable that the punishment for contempt was imposed solely because of the opinion of the court that the witness was wilfully refusing to testify truthfully; that is, was committing perjury.

"Whether, then, power to punish for contempt exists in every case where a court is of the opinion that a witness is committing perjury, is the test we must here apply. Because perjury is a crime defined by law, and one committing it may be tried and punished, does not necessarily establish that when committed in the presence of a court it may not, when exceptional conditions so justify, be the subject-matter of a punishment for contempt. For an application of this doctrine to perjury, see Berkson v. People, 154 Ill. 81, 39 N. E. 1079; Re Rosenberg, 90 Wis. 581, 63 N. W. 1065, 64 N. W. 299; Stockham v. French, 1 Bing. 365, 130 Eng. Reprint 147; and see Re Schulman, 101 C. C. A. 361, 177 Fed. 191; Re Steiner, 195 Fed. 299; Re Ulmer, 208 Fed. 461; United States v. Appel, 211 Fed. 495. This being true, we must ascertain what is the essential ingredient in addition to the elements, constituting perjury under the general law which must be found in perjury when committed in the presence of a court to bring about the exceptional conditions justifying punishment under both.

"Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured. Toledo Newspaper Co. v. United States, 247 U. S. 402, 62 L. Ed. 1186, 38 Sup. Ct. Rep. 560; Marshall v. Gordon, 243 U. S. 521, 61 L. Ed. 881, L. R. A. 1917F 279, 37 Sup. Ct. Rep. 448, Ann. Cas. 1918B, 371.

"An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted,—a principle which, applied to the subject in hand, exacts that *in order to punish perjury in the presence of the court as a contempt, there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty.* As illustrative of this, see United States v. Appel, *supra.* It is true that there are decided cases which treat

perjury without any other element, as adequate to sustain a punishment for contempt. *But the mistake is, we think, evident, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing.*" (Italics ours).

The Court of Appeals of the District of Columbia has recognized that obstructiveness is the essential element of contempt of court. In *McCaully* v. *United States*, 25 App. D. C. 404, 413, it said: "the question is not one of geography or topography, or propinquity or remoteness, *but one of direct influence upon the administration of justice.*" (Italics ours).

To the same effect are:

Pierce v. *United States*, 37 App. D. C. 582,
Ex Parte Savin, 131 U. S. 267,
Ex Parte Cuddy, 131 U. S. 280,
Kirk v. *United States* (C. C. A. 9), 192 Fed. 273,
In re Independent Publishing Co. (C. C. A. 9), 240 Fed. 849,
United States v. *Huff*, 206 Fed. 700,
Telegram Newspaper Co. v. *Commonwealth*, 172 Mass. 294,
Myers v. *State*, 46 Ohio St. 473.

A necessary corollary to the principle enunciated by this Court (247 U. S. 419) that the test "*is the character of the act done and its direct tendency to*

prevent and obstruct the discharge of judicial duty" is that if the act done does not have such a tendency, it makes no difference what the purpose, design or intention of the act was.

In *Wartman* v. *Wartman*, Taney 362, 29 Fed. Cas. No. 17,210, Chief Justice TANEY said, "*As regards the question whether a contempt has or has not been committed, it does not depend on the intention of the party, but upon the act he has done. It is a conclusion of law from the act.*" (Italics ours.) On this point see also *Kelly* v. *United States* (C. C. A. 9), 250 Fed. 947; *Levinstein* v. *E. I. du Pont de Nemours & Co., Inc.*, 258 Fed. 262.

Therefore the colorful allegations of the petition that the object of respondent Sinclair in employing detectives to watch the jurors was "to bribe, intimidate and influence said jurors and each or any of them and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause," etc. (R. 3, 4) are meaningless. The sole question is whether respondent Sinclair did any act to influence or interfere with any juror or tending directly to influence and interfere with any juror. The record is barren of any evidence that he did any such act or that he had the motive and design charged in the petition.

Another necessary deduction from the principle *that obstructiveness is the essence of contempt* is found in the rule that misbehavior of such a char-

acter as to constitute contempt of court can only occur during the pendency of a proceeding. There must be something before a court to which the alleged misbehavior relates. If it occurs prior or subsequent to the proceeding, it can have no obstructive quality. In *Craig* v. *Hecht*, 263 U. S. 255, Mr. Chief Justice TAFT, delivering a concurring opinion, said: (P. 278)

> "If the publication criticizes the judge or court after the matter with which the criticism has to do has been finally adjudicated and the proceedings are ended so that the carrying of the court's judgment cannot be thereby obstructed, the publication is not contempt and cannot be summarily punished by the court, however false, malicious or unjust it may be."

See also *Patterson* v. *Colorado*, 205 U. S. 454, and the recent case of *Coll* v. *United States* (C. C. A. 1), 8 F. (2d) 20, wherein the Circuit Court of Appeals for the First Circuit, distinguishing between the first section of the Act of 1831 (now Section 268 of the Judicial Code) and the second section of the Act (now, slightly modified, Section 135 of the Penal Code), held that an act alleged to constitute an endeavor to influence the testimony of a prospective witness, occurring when the court was not in session and before the prospective witness had been summoned, did not amount to contempt of court within the meaning of Section 268.

Therefore, even if the record disclosed (as it does not) that respondent Sinclair had anything to do with procuring the making of the affidavit alleged in the petition to be false (R. 5) and the submission of said affidavit to the Honorable Frederick L. Siddons, Associate Justice of the Supreme Court of the District of Columbia, there could be no contempt of court as there was nothing pending before said Justice to which such affidavit related. We have pointed out elsewhere (Brief, p. 131) that the evidence as to the submission of the said affidavit was not received as affecting the respondent Sinclair (R. 621-22).

Having established that the only proper test of contempt of court is *whether the act complained of is of such a character as to obstruct or tend directly to obstruct the administration of justice*, let us consider various classes of cases in which the test has been applied.

The first class consists of cases where a juror has been approached in an attempt to influence him in the impartial discharge of his duties. Such a case was *McCaully* v. *United States*, *supra*, decided by the Court of Appeals of the District of Columbia. Clearly such conduct is contempt.

A second class of cases is found in those where there was a conspiracy to do an act which would constitute contempt of court but where the contempt is not actually committed. Such a case is *Doniphan* v. *Lehman*, 179 Fed. 173. The facts in that case

were that the conspiracy alleged was entered into between Doniphan and Lehman in the States of Kentucky and New York and the overt acts in furtherance of the conspiracy were committed in those states. The acts committed in Kentucky consisted in the sale and delivery of property and in the payment of money and it was not claimed that those acts, however reprehensible, constituted a contempt of court. The act claimed to constitute a contempt was the taking of a deposition in New York in furtherance of the alleged conspiracy by Doniphan before an officer selected by agreement of the parties, and sending the same by mail to the Clerk of the Court at Indianapolis, Indiana, who received and filed the same to be used on the trial of the suit. After the deposition was filed, it was published but at whose instance it was not shown. The Circuit Court of the District of Indiana, after referring to Revised Statutes, Section 725 (Sec. 268 of the Judicial Code), said at page 174:

> "This statute embraces three classes of cases in which the court is given jurisdiction to punish contempts: (1) Misbehavior of any person in the presence of the court or so near thereto as to obstruct the administration of justice; (2) misbehavior of the officers of the court in their official transactions; (3) disobedience or resistance by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the court. The facts

set out clearly do not present a case of contempt under the second or third clauses of the above section. If a contempt is disclosed, it is under the first clause, making misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice a contempt. A conspiracy to misbehave in or near the presence of the court for the purpose of obstructing the administration of justice does not of itself constitute a punishable contempt. It is the act of misbehavior in or near the presence of the court, and not the conspiracy, which constitutes the contempt. If the complainant, Doniphan, and the defendant, Lehman, formed the alleged conspiracy, they committed no contempt in so doing. And if they have committed overt acts in furtherance of the conspiracy, they have not made themselves amenable to punishment for contempt unless their acts constitute misbehavior in or so near the presence of the court as to obstruct the administration of justice. The taking of a deposition in New York for the purpose of furthering the conspiracy cannot be held to be misbehavior in or so near the presence of the court as to obstruct the administration of justice. The taking of such a deposition is not misbehavior in or near the presence of the court, nor does its mere taking tend to obstruct the administration of justice. Something more must be done than merely to take a deposition in New York in order to obstruct the administration of justice here. The misbehavior must be a hindrance or obstruction of justice; and, so long

as the deposition is not used or offered to be used in court, it cannot be regarded as an obstruction to the administration of justice. It may never be used or offered for use in court. The filing of it in the clerk's office and its publication after such filing cannot of themselves be held to be misbehavior in or so near the presence of the court as to obstruct the administration of justice. It cannot be regarded an obstruction to the administration of justice so long as it is neither used nor offered for use in or near the presence of the court. Doubtless, if the deposition were used or offered for use in court, it would constitute a contempt. But until some use is made, or is sought to be made of it, having a tendency to obstruct the administration of justice, no contempt has been consummated."

A third class of cases consists of those where the respondent sought to have another person attempt to influence a member of a jury or a witness. There are several such cases and in not one of them was the respondent held guilty of contempt of court.

In *United States* v. *Carroll*, 147 Fed. 947, the facts were that Carroll had sought to get one Hopkins to influence one or more of the members of a jury sitting in a case to which Carroll's brother was a party. Hopkins never agreed to do anything for Carroll nor did he do anything in the way of endeavoring to influence a juror. The court held that this conduct, while reprehensible, did not amount to contempt of court, saying at page 954:

"Thus again indicating that the act put forth must itself have the direct and natural effect to obstruct or impede. If this be so, then the act of Carroll in endeavoring to get Hopkins to do something for him, or his brother, with the jury, which Hopkins never consented to, could of itself have no direct or sensile effect to obstruct or impede the due administration of justice. It was an endeavor which in no way reached or influenced the jury, and, therefore, tended in no way to impede justice or the administration thereof. If the endeavor had been directly with the jury or a member thereof, then it would have reached the mark; but an effort to get a third person to act, who declined, stops short of a misbehavior that is effective to obstruct, or impede justice, or to hinder its administration."

In the case of *In Re Ellison*, 256 Mo. 378, the facts were that Ellison had sought to get one Highsmith to interview a juror in a trial then pending and to do what he could with the juror for the plaintiff in the case, as stated in the citation "intending and attempting to improperly and unlawfully influence said juror and through said juror the jury in said cause." The Supreme Court of Missouri found that while this conduct was in violation of certain penal statutes of the state, it did not amount to contempt of court, saying at page 385:

"All of the authorities seem to agree that a court of general jurisdiction has the inherent

authority to punish for contempt any person who wilfully or wantonly attempts by any means whatsoever, to improperly influence a juror in the impartial discharge of his duties as such, whether by conversation, attempt to bribe or to exert any undue influence with an officer in the selection of the personnel of the jury. (9 Cyc. 16, par. 2, and cases cited).

"But after a careful reading of the numerous cases there cited I have failed to find a single case where the court has punished a person, as in this case, where he in no manner approached, discussed, or offered to bribe the juror or officer in person. In other words, the courts seem to attach to the words, 'to attempt to influence a juror,' the meaning that the contemnor or his representative must approach the juror in person before the contempt is completed.

"In the case at bar the appellant requested Highsmith to see the juror for him, but Highsmith never did so, nor did he ever intend to so do. That being true, the juror was not influenced, nor was he attempted to be influenced in his action as a juror; but the appellant attempted to have Highsmith to influence the juror, which he never did.

"That conduct of appellant, in my opinion, after a careful consideration of all the authorities cited, and which I have been able to find bearing upon the subject, did not constitute contempt of court.

"If, however, he or Highsmith, his representative, had approached the juror and had in any

manner attempted to influence him, then clearly both of them would have been guilty of contempt; but under the facts as charged in the citation and established by the uncontradicted evidence, neither of them was guilty of contempt."

In *Ex Parte McRae*, 45 Texas Crim. Rep. 285, 77 S. W. 211, the facts were that McRae asked one Hopwood who was a constable at Elmendorf about two men from that place who were on a jury, what kind of men they were, and whether they would give a big verdict against a railroad just because it was a railroad. Hopwood replied that they were good, straight men and would do what they thought was right and that he would be willing to take either one or both of them on any case against him, either criminal or civil. McRae told Hopwood, "While you are around keep your ears open and see if you can hear anything." McRae testified that he thought possibly some of them would go around talking—"some of these agents"—and if he was standing around he could hear if any attempt was made or any proposition was made to influence them and if he heard any improper question or remarks he could inform him. "I mean either to these two jurors or any of them." The court said (p. 288):

"We do not think this testimony legally authorized the court to fine relator for contempt. We do not understand the authorities to go to

> the extent of holding that the bare effort on the part of relator to secure the services of a party to find out how the jury stands in reference to a case then on trial would *per se* authorize punishment for contempt, unless the party so employed by relator should make some effort to tamper with the juror or hold out some inducement to the juror to decide one way or the other or should talk with the juror about the case with the view of ascertaining what position he occupied in reference to the testimony. * * * Because the conduct of relator does not bring him within any of the known rules authorizing this court to remand him for contempt he is hereby ordered discharged from custody."

In *Ex Parte Kemper*, 216 S. W. (Texas) 172, the facts were that the relator approached a brother-in-law of a juror and sought to have the juror corrupted by the promise to him through the brother-in-law of a sum of money if said juror would hold out for a hung jury or an acquittal. The court said (p. 172):

> "In our opinion, when the alleged contempt is an attempt to interfere with the jurisdiction or processes of the courts, and the same has never reached the point of any kind or color of communication or contact between the corruptive effort and the officers, process or matters sought to be interfered with, the power to contemn is lacking."

In the class of cases last above referred to acts had been done, actually designed and conceived for

the purpose of endeavoring to influence jurors in the discharge of their duties. Yet, because no contact was actually established with the jurors, their functions were not and could not have been obstructed. Hence, it was held there was no contempt of court. How much weaker is the case of the government here where there is nothing involved but a mere surveillance of the jury, where those making the surveillance were instructed never to approach or to have any sort of contact with a juror, and where those instructions were so rigidly adhered to that no juror was even conscious during all the time that he or she was acting as a juror that he or she was being kept under surveillance?

But take another class of cases, more akin to the one involved here. It is a matter of common knowledge that litigants or their counsel in large cities engage the services of someone to obtain information concerning prospective jurors for the purpose of enabling counsel to properly make their selections at the trial. Such preliminary investigation has never been considered contempt of court. Typical of such cases are *Castleman* v. *Continental Car Co.*, 258 S. W. (Ky.) 658, and *Wells* v. *Dist. Ct. of Polk County*, 126 Iowa 340. In the latter case the court said (p. 341):

> "The return to the writ issued out of this court makes it appear that in October, 1903, an information was filed in the District Court of Polk County, charging this plaintiff with a con-

tempt of court for that being a party defendant in a certain cause pending in said court, he had knowingly attempted to improperly influence the conduct of one John Fletcher, a juror in regular attendance upon said court, and afterwards drawn and sworn as one of the jury for the trial of such cause, by causing and procuring one F. A. Marvin to converse with said juror about such cause, the merits thereof and the verdict to be rendered therein, and to solicit said juror to favor the defendant therein in respect of the verdict to be rendered. * * *"

Page 343:

"Proceeding now to a consideration of the question as made in the case before us, and keeping in mind that the specific charge in the information is that through one Marvin this plaintiff attempted to influence the juror Fletcher, it is to be said that the case rests wholly upon the following facts: That Marvin did have a conversation with Fletcher, in which the cause pending against this plaintiff was mentioned, and that improper statements were made by Marvin is conceded. On the part of the prosecution it was sought to connect this plaintiff with such improper matter by the testimony of one B. D. Stevenson, a newspaper reporter. He testified that upon a report being made by the committee of the bar of Polk County, having a relation to certain matters of alleged contempt, and as, we assume, involving the name of this plaintiff, he sought an interview with plaintiff. The latter told him that he did not know that he had anything to say

in the matter; * * * that there was nothing in the matter particular.' The witness does not pretend that any alleged conversation between Marvin and Fletcher was referred to during the interview, and was not willing to testify that the name of Marvin was even mentioned. As disclosed by the record, all that by any possibility could be claimed as of any materiality was that after refusing to talk about his own case plaintiff stated a suppositious case in substance as follows: If one man happening to meet another, who was a juryman, should say: 'Well, do what you can for my friend Wells' or something of that nature, if that was bribery, he expected bribery had been practiced. Plaintiff was a witness on his own behalf and stated that before his case was to come up in court he went to Marvin, who was an employe of the United States Express Co., to make inquiry concerning a man by the name of Fletcher, also an employe of the said company, whom he understood had been drawn on the jury. He says he did this to ascertain if there was any reason for challenging Fletcher should he be drawn on the jury in his case. He then testified that Marvin pointed out Fletcher and that he (plaintiff) responded by saying that he did not think such was the man. 'Marvin says, "Perhaps it is his father." I said, "Very likely. What kind of a man is he and where does he live?" He said, "He lives out on Fifth Street." I asked Marvin if he thought he had been against me politically. He said, "I will see." * * * Marvin did not say that he would see

Fletcher. He said that he would see; or in other words, he would find out—find out if he was against me politically. I did not understand when I left there that he was going to see Fletcher, the juryman. I did not know that he did see him until Fletcher testified to it in court.' Foregoing is the substance of all the testimony relied upon to support the judgment. To our minds it is wholly insufficient to make out a case of contempt. That plaintiff had a right to do and say what he admits having said and done must be admitted. So far there is not even room for controversy. The stating of a suppositious case by plaintiff to a newspaper reporter, standing alone, cannot be accepted as a confession tending in any degree to prove his guilt of the offense charged in the information. Contempt proceedings are in their nature criminal and before a conviction is had the proof of guilt should be clear and satisfactory."

In the light of the above authorities let us now apply to the acts of Sinclair in this case the test which this court distinctly said in the *Toledo Newspaper Company Case* (*ante*, p. 61) is the only proper test,—"*the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty.*" (Italics ours.) Again let us state what the acts were:

Sinclair employed a licensed private detective agency to keep under observation the jurors in a case being tried against him for the purpose of as-

certaining what persons, if any, came in contact with the jurors to the end that he might know if any person who might be desirous of seeing him convicted should endeavor in any way to seek contact with any of the jurors. The detectives received strict instructions that they should not come in contact with, approach or converse with any of the jurors and should not in any wise molest, interfere with, impede or influence any of the jurors in the performance of their duties as such. We repeat, these instructions were so faithfully carried out that not a single juror was even conscious during the pendency of the trial that he or she was being kept under observation.

Sum it all up and call it "surveillance" or "shadowing" or what you would please. The act neither obstructed nor tended directly, or even indirectly, to obstruct the performance of judicial duties. Indeed the character of the act carries within itself the negation of obstructive quality. Shadowing is inherently opposed to contact and without contact there can be no obstructiveness. Shadowing has no tendency at all; it simply remains shadowing. The trial court apparently proceeded on the theory that shadowing a jury has a necessarily inherent obstructive effect. In this we think the court here fell into the same error in respect of shadowing as did the lower court in *Ex Parte Hudgings* in respect of false swearing. In the latter case this court said, p. 383 (249 U. S.):

> "But the mistake is, we think, evident, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing."

In the instant case the trial court seems to have been persuaded to this view merely because a mistrial was in fact declared. Assuming for the purpose of the argument that the shadowing of the jury was the cause and even the proximate cause inducing the court to declare the mistrial,—assuming that the trial court had the power within his discretion to declare a mistrial because of the shadowing,—still, it does not follow that he had the power to punish for contempt of court those responsible for the shadowing. The trial court in the *Hudgings case (supra)* had a right to believe, if he chose, that the witness was swearing falsely and might have relied on such a belief within the sphere of his proper duties, but that belief gave the court no power to punish the witness for contempt, because, said this court, "false swearing has no necessarily inherent obstructive effect." We earnestly insist that jury shadowing has no necessarily inherent obstructive effect, even though (which we deny) it might have moved the court acting within his discretion, whether wisely or unwisely, to declare a mistrial, and the fact that the court did declare a mistrial does not react to give the act of

shadowing a necessarily inherent obstructive quality which it did not possess before the mistrial was declared.

If it had no such quality it could have no *tendency*, directly or even indirectly, to impede or obstruct the performance of judicial duty. What, indeed, is the meaning of the word "tendency" as applied to criminal offenses?

In the recent case of *People* v. *Rizzo*, 246 N. Y. 334, 158 N. E. 888, the evidence disclosed that Rizzo and three others intended and planned to rob one Charles Rao of a payroll which he was to carry from a bank for the United Lathing Company. They started out in an automobile, two of them armed, looking for Rao. They went to the bank from which he was supposed to get the money and to various buildings being constructed by the United Lathing Company. At one building Rizzo jumped out of the car and ran into the building, thinking that he would find Rao in that building, whereupon he and his confederates were arrested by police officers who had followed them. The would-be robbers had not found or seen the man they intended to rob. The question was whether these facts constituted the crime of an attempt to commit robbery and the appeal involved the interpretation of Section 2 of the Penal Law of New York which prescribes "an act, done with intent to commit a crime, and *tending* but failing to effect its commission, is 'an attempt to commit that crime.'" (Italics ours.) The Court of Appeals of

New York held that appellant had been wrongfully convicted and said (p. 336):

> "The word 'tending' is very indefinite. It is perfectly evident that there will arise differences of opinion as to whether an act in a given case is one *tending* to commit a crime. 'Tending' means to exert activity in a particular direction. Any act in preparation to commit a crime may be said to have a tendency towards its accomplishment. The procuring of the automobile, searching the streets looking for the desired victim, were in reality acts tending toward the commission of the proposed crime. The law, however, has recognized that many acts in the way of preparation are too remote to constitute the crime of attempt. The line has been drawn between those acts which are remote and those which are proximate and near to the consummation. *The law must be practical, and therefore considers those acts only as tending to the commission of the crime which are so near to its accomplishment that in all reasonable probability the crime itself would have been committed, but for timely interference.* The cases which have been before the courts express this idea in different language, but the idea remains the same. The act or acts must come or advance very near to the accomplishment of the intended crime." (Italics ours.)

Applying that principle to the case here, can it be said that shadowing of a jury, without more, is so

near to the accomplishment of an obstructive act that in all reasonable probability the act would have been committed but for timely interference? There is nothing in this record from which even an inference may be legitimately drawn that the shadowing would have led to contact with a juror but for timely interference or otherwise. Merely shadowing a juror is not only not "very near" but it is remote from and negatives actual contact with the juror.

In the New York case, *supra*, the defendants intended and were preparing to commit a crime and actually looking for their victim, but the court said that they did not come near enough to accomplish it to be guilty of even an attempt to commit it. How much less in this case did respondents, not intending to establish a contact with any juror, come near to accomplishing such a contact?

We have submitted, and we confidently assert, that the mere fact that a mistrial was declared in the case of United States v. Fall and Sinclair (referred to in the petition) by the court acting within his discretion because of the shadowing of the jury by respondents, does not and cannot give to the act of shadowing an inherently obstructive quality; in other words, that jury shadowing must be measured by the test of necessarily inherent obstructive character regardless of whether or not it was the cause of the mistrial being declared and that the declaration of the mistrial could not give it such a character if it did not

otherwise possess it. We nevertheless submit that the record does not sustain a finding that the shadowing *was* the cause of the mistrial, but even if it in part induced the court to declare a mistrial, it was no more than a remote cause.

This is a criminal proceeding and the relation of cause and effect should be shown to be closely knit to a far greater degree than is required in civil causes. Yet in the law of civil liability for negligence, we find that the rule requires a closer proximation of cause to effect than was here applied by the trial court in assuming to criminally punish respondents. The well known rule is that civil liability must be founded on an act which is the "proximate cause" of the injury and not on a "remote cause."

In *Salsedo* v. *Palmer*, 278 Fed. 92, 96, the Court of Appeals for the Second Circuit quoted, with approval, the language of the Court of Appeals of New York in *Laidlaw* v. *Sage*, 158 N. Y. 73, 99, as follows:

> "A proximate cause is one in which is involved the idea of necessity. It is one the connection between which and the effect is plain and intelligible; it is one which can be used as a term by which a proposition can be demonstrated, that is, one which can be reasoned from conclusively. A remote cause is one which is inconclusive in reasoning, because from it no certain conclusion can be legitimately drawn. In other words, a remote cause is a cause the

> connection between which and the effect is uncertain, vague or indeterminate. • • • The proximate cause being given, the effect must follow. But although the existence of the remote cause is necessary for the existence of the effect (for unless there has been a remote cause there can be no effect), still the existence of the remote cause does not necessarily imply the existence of the effect. The remote cause being given, the effect may or may not follow."

We respectfully urge that the connection between the shadowing of the jury and the declaration of the mistrial is most uncertain, vague and indeterminate. The petition alleges that the mistrial was declared "because of the fact that sworn charges had been made against the said Edward L. Kidwell, Jr., one of said jurors, to the effect that he, the said Edward L. Kidwell, Jr., while said trial was in progress, to wit, on the 29th day of October, 1927, outside of the court room where said cause was being tried, to wit, at No. 411 Four and a Half Street, Southwest, in the city of Washington, in said District of Columbia, had made remarks in the presence and within hearing of J. Ray Akers and Donald Kay King concerning his attitude and intended action as a juror aforesaid towards the issues on trial in said cause; and sworn charges, also, to the effect that there were a large number of operatives of the William J. Burns International Detective Agency of New York, then engaged in the District of Columbia, since October

18th, 1927, in a close, intimate, objectionable, and improper surveillance and investigation of the jurors aforesaid and the relatives, neighbors, and friends of said jurors." (R. 2-3).

The record shows indisputably that the whole matter relating to the juror Kidwell was instigated, engineered and consummated solely by persons in no way connected with any of the respondents and entirely without the knowledge of any of the respondents. The persons who so instigated the Kidwell matter knew nothing of the jury shadowing. Indeed, the record is devoid of anything to show any connection, direct or indirect, between the Kidwell matter and the shadowing of the jury. Much less does it show that the Kidwell incident resulted in any way from the shadowing. Yet the trial court in its decision said, "If it had not been, for aught that appears in this case, for the surveillance, there would not have been the incident regarding the juror Kidwell." (R. 857). The record does not and cannot support such a finding. The record affirmatively shows that the incident regarding the juror Kidwell happened entirely independently of the surveillance. [Testimony of Kidwell (R. 492-498); testimony of Akers, (R. 516-526); testimony of King, (R. 595-613.)] There is not a scintilla of evidence to the contrary. If the trial court meant that he would not have declared a mistrial because of the Kidwell incident if there had been no surveillance, that fact

or state of his mind would not of course appear in this case. But it remains true in our view that the only contempt of court disclosed by this record was that of the persons connected with the Kidwell incident.

Whether the alleged conversation between Kidwell and a newspaper reporter and the subsequent publicity given thereto should have moved the court to declare a mistrial is not for us to say, but the records shows that the Kidwell incident was the first ground for the declaration of a mistrial, as alleged in the petition in this case. (R. 2-3). Moreover, the record discloses that counsel representing the government in the case of United States v. Fall and Sinclair, in which a mistrial was declared on November 2 (R. 2), knew of the shadowing of the jury on October 24 (R. 646),—at least a week before the matter was laid before the court. The record further discloses that after government counsel learned on October 24 (R. 646) that the jury was being shadowed, the trial proceeded without any indication or suggestion of the administration of justice being in any wise obstructed, and it was not until after the occurrence of the Kidwell incident on October 29 that the court was apprised (by affidavits filed October 31st) (R. 600) that the operatives of the Burns Detective Agency were engaged in shadowing the jury, although from and after October 24 government counsel were in daily telephonic communication with one of the operatives engaged in

the shadowing. (R. 654). In the light of this state of the case, as disclosed by the evidence, we do not think it can be successfully contended that the shadowing of the jury was the cause of the mistrial, nor do we think it can be presumed that government counsel would not have apprised the court of the Kidwell matter had it not been for the surveillance of the jury.

The only proper conclusion to be drawn from this record is that the Kidwell incident was the proximate cause of the declaration of the mistrial and the shadowing of the jury at most only a remote cause. We think this is deducible even from the decision of the trial court wherein it is said:

> "If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that *at least in part, together with the publication of the affidavit regarding it, but at least in part*, necessitated a mistrial." (R. 855). (Italics ours.)

This implies that there were intervening causes and in effect makes the shadowing of the jury but the remote cause. The necessary connection between cause and effect constituting the prime distinction between a proximate and a remote cause is totally lacking because the declaration of a mistrial is not a necessary effect of shadowing the jury unless there is in the act of shadowing a necessarily inherent obstructive quality and as we have here-

inbefore pointed out, that is the sole question in this case.

In our view the trial court not only overlooked or misconceived the essential characteristic of the obstructive tendency underlying the contempt power or mistakenly attributed a necessarily inherent obstructive effect to jury shadowing, but also misconceived the very character of the contempt proceeding before him.

Moreover, the trial court appears not to have considered that this was a case of criminal contempt, and ignored the rule respecting the measure of proof necessary to support a conviction in such case. In *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, this court said, through Mr. Justice LAMAR (p. 444):

> "Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself."

In and by the petition the United States undertook the prosecution of the respondents for a criminal offense based upon Section 135 of the Penal Code. The District Attorney presented, and the trial court seems to have entertained, the whole cause as though it were a prosecution under that section, but without a trial by jury. This—in the

very teeth of the doctrine enunciated by this court in the *Toledo Newspaper Company Case*, *supra*, and in *Marshall* v. *Gordon*, *supra*, and interfering with "the great guaranties and limitations concerning the exertion of the power to criminally punish" referred to by Chief Justice WHITE in the latter case.

We have hereinbefore quoted Section 135 of the Penal Code (*ante* p. 52) and have pointed out that it and Section 268 of the Judicial Code were originally enacted together in the Act of 1831.

There is a clear distinction between the two sections. Speaking of these two sections of the Act of 1831, the Circuit Court of Appeals for the Second Circuit in *Coll* v. *United States*, 8 F. (2d) 20, 22, said:

> "It is elementary that the legislative purpose must be inferred from the entire act. The two sections are to be read together. Section 2 covers misbehavior in obstructing the administration of justice not punishable as contempts under Section 1. The United States Attorney for Porto Rico concedes that the alleged offenses of Dr. Coll might have grounded indictments and prosecution under Section 2; but his extraordinary contention is that it was necessary to proceed in such fashion as to deprive the alleged wrongdoer of a jury trial. In his brief it is stated:
>
> "'We are impelled to close this paragraph by saying that the public character, notoriety,

> and influence of those charged with contempt in this case was of such a nature that a reasonable man, knowing the situation as it then existed, would have great and serious doubt whether a jury could be found within the jurisdiction of the court below that would convict the defendants below, even for the grossest contempt.'
>
> "This amounts to urging usurpation of jurisdiction, in order to achieve a conviction thought impossible under the forms of law provided by Congress. We do not accept any such proposition."

The court further pointed out *(Coll* v. *United States, supra)* that while the power to punish for contempt is vitally necessary to courts, it is also highly dangerous, and that this court has carefully guarded the exercise of that power as evidenced by its most recent decision *(Cooke* v. *United States,* 267 U. S. 517), saying (p. 24):

> "All the implications of this latest decision of the Supreme Court concerning criminal contempt make for the construction that we give to the Statute of 1831."

Upon this point we submit that further language of this court in *Ex Parte Hudgings, supra,* is particularly appropriate. At page 384 (249 U. S.), this court said:

"Testing the power to make the commitment which is under consideration in this case by the principles thus stated, we are of opinion that the commitment was void for excess of power,—a conclusion irresistibly following from the fact that the punishment was imposed for the supposed perjury alone, without reference to any circumstance or condition giving to it an obstructive effect. Indeed, when the provision of the commitment directing that the punishment should continue to be enforced until the contempt, that is, the perjury, was purged, the impression necessarily arises that it was assumed that the power existed to hold the witness in confinement under the punishment until he consented to give a character of testimony which, in the opinion of the court, would not be perjured.

"In view of the nature of the case, of the relation which the question which it involves bears generally to the power and duty of courts in the performance of their functions, of the dangerous effect on the liberty of the citizen when called upon as a witness in a court which might result if the erroneous doctrine upon which the order under review was based were not promptly corrected, we are of opinion that the case is an exception to the general rules of procedure to which we have at the outset referred, and therefore that our duty exacts that we finally dispose of the questions in the proceeding for habeas corpus which is before us. It is therefore ordered that the petitioner be discharged."

Applying that language to the case here, the trial court adjudged the respondents guilty of contempt, and imposed punishment for an act which, in its view, the respondents had no right to do (R. 846), "lacks a moral quality" (R. 847) and "has a most sinister aspect" (R. 848), without reference to any circumstance or condition giving to it an obstructive effect.

It is claimed by the government that the record discloses several instances of acts on the part of the Burns agents and on the part of one respondent which went beyond the mere shadowing of a jury. These claims as set out in the petition are:

> (1) "That said operatives, after said Juror Kern was sworn, and while serving as a juror in the said cause, at the direction of the said Charles G. Ruddy, proceeded to investigate any and all encumbrances upon the home of said Juror Kern in the said City of Washington, District of Columbia, and the operatives so detailed investigated the land records of the District of Columbia, reported in writing, and concluded said report with the statement that efforts would be made to ascertain the names of those holding trust notes secured upon said Juror Kern's home." (R. 5-6).

The evidence bearing on this claim is as follows:

The respondent **Day** testified:

> "From my standpoint, Kern and Kidwell were not depicted in Government's Exhibit 1 as ex-

actly the most model subjects. This showed that Kern was a driver of a bread wagon and the reports showed that he was driving around in Hudson limousines or Hudson coaches and Essex coaches; he seemed to be a man who had considerable money for what I would ordinarily imagine that a driver of a bread wagon would be making." (R. 828).

"I conversed with Ruddy specifically about Juror Kern and about the investigation of him. I do not remember the date, but I remember saying to Ruddy that this man did not live up at all with the report he had handed me, Exhibit 1, and I wanted to know something about him. I think Ruddy said, 'Why don't you get a credit slip out on him.' I said, 'What do you mean by that?' He said, 'Well, as to his standing, as to his substantiality; whether he owns his home, whether he owes money every place, or just what.' I said, 'Well, that is a good idea. Do you do that investigating?' He said they did. I said, "Where do you start?' And he said, 'I generally start to look up a man's home, whether he owns it, whether it has an encumbrance on it.' I said, 'Well, suppose you do that.' I came in contact with Britton Browne at 2118 Leroy Place, shortly after that talk with Ruddy. I asked him how to look up a mortgage to find out about a man's encumbrance. He said, 'We do that every day. That is normal in the real estate business. We have definite, specific people to do that. And if you would like to avail yourself of the services of these people there,

naturally you can do so.' I saw Mr. Browne at his office. I told him I had come into see him but didn't find him. I therefore applied to a man who was there relative to a mortgage, or if there was a mortgage on a certain piece of property. He asked me who it was, and I said I thought it was Mr. Dove. He asked me if Dove gave me the information. I said no, but that he said that he would through his regular channels obtain this information for me. Mr. Browne asked in the office if they had obtained certain information which I wanted. They stated that they had handed me a slip of paper saying that there was a mortgage of some $4,000 or $5,000 on a certain piece of property, and that the mortgage was in the name of Kern and somebody else. Mr. Browne said, 'Who has this mortgage?' I said I didn't know. He said I must find out. He then referred to somebody to find out who held the mortgage and how much it was. The information came back and he told me that the mortgage was owned or held by a Building Loan Company, that it had been reduced and was being reduced by the payment of $40 a month. I said to him, 'I am very suspicious of somebody, one of our competitors, or one of our enemies, or somebody paying this off. And I would like to be advised if anybody did pay it off.' * * * I think I told Mr. Browne that Kern was one of the jurors in this case, and that that was why I wanted this information. From my standpoint I did everything openly and above-board. I first addressed a clerk I had

never seen before in my life. * * * I did not, in this investigation of Kern, nor at any time before that investigation, nor at any other time have in mind any purpose or thought of directly or indirectly making contact with Juror Kern. Absolutely not. Under no circumstances." (R. 830-31).

"It was approximately October 26th that I began to make my own inquiries as to the encumbrance on Kern's property. That was due to the reports that I had received on Kern up to the 25th, and due to my having met in the Mayflower Hotel a certain individual that I had always been very suspicious of. On the 25th or 26th I definitely made up my mind that it was important to ascertain what the character and extent, if any, of the encumbrance on Kern's property was. * * *" (R. 833).

"I did not report to or consult with Mr. Sinclair with respect to the directions which I gave and my own steps which I took to ascertain the encumbrance on Kern's property. I did not see him. * * * I think the trial was over when I took it up with him. I never received O'Reilly's report, which was read in Court relative to that morning. I considered the matter closed when it was a Building and Loan Association, and I was to be notified by Mr. Hagner or Mr. Browne if anybody tried to pay it off. Hagner had not given any instructions, but I had said that I would like to know if it was paid off by anybody. I was suspicious that somebody would. I did not give definite instructions to Hagner &

Company to watch the records to see whether or not the mortgage was paid off, but I would certainly have gone back there later on to find out if anybody did. I did not go back because a mistrial was caused, and I had left Washington. I did not anticipate that Hagner & Company would keep me informed as to that." (R. 834).

The witness **Ruddy** testified:

"I was asked by Mr. Day, around the 26th, the best way to find out how responsible juror Kern was as he believed him irresponsible. I told Mr. Day the best way was to make a general credit check on the man. We do it constantly. I said to see whether he owned his own home and whether he met his obligations, and Mr. Day said that he was particularly anxious that we should find out if there were any encumbrances on the property, and if any of them had been recently paid off. I instructed O'Reilly to find out whether Mr. Kern owned his own property, and to make a general credit report on him. O'Reilly reported back in writing that Mr. Kern and his wife owned their own home jointly and that no encumbrance had been recently paid off. He did not learn whether there were any encumbrances on the home. This report was rendered in writing by the operative, but never reduced to a typewritten report to be handed to Mr. Day and I never reported it to him personally." (R. 87-8.)

"I testified yesterday that Day had asked me to make a report to him on the responsibility of Juror Kern, but that I had not made the report. The report refers to 1315 North Carolina Avenue, the home of Juror Kern. This paper is a report of the early part of the investigation of the responsibility of Juror Kern. Following Day's instructions I caused an investigation to be made into Juror Kern's responsibility. • • • I did not communicate the contents of the report to Day, nor did I send it or communicate its contents to Sherman Burns. It was among the papers seized under the search warrant executed October 31st. This is dated the 28th. I had made edited reports of reports that had been made to me on October 28th, 29th and 30th. I had covered all with the exception of this one. I did not reach this one because of the question in my mind as to whether it did not exceed the instructions that I had received from the agent. Day told me that he was very anxious to find out about Kern's responsibility. I told Day that the best way to obtain the information as to the responsibility and reliability of Kern was to make a credit report. That was the logical way to establish it. There are a lot of people well off financially that do not meet their financial obligations. Part of what Day wanted me to find out was whether Kern met his financial obligations. Day didn't make any statement, or mention the word 'financial.' I have no doubt about what Day wanted to know." (R. 203-4.)

"I have already testified that Day spoke about wanting to find out the responsibility or the irresponsibility of Kern. That was about the 26th of October." (R. 373.)

The witness **O'Reilly** testified:

"Sometime during the morning of the 28th Ruddy assigned me to make a credit investigation of Juror Kern. Up until this time I do not believe that Ruddy or any of the operatives had spoken to me about Kern. Ruddy told me to find out, if I could, in my own way, as to the responsibilities of Kern. He told me to find out if he owned his own home, and if so, to make an investigation if the mortgage had recently been paid off. I did not ask Ruddy what he meant by the word 'responsibility.' I was given instructions that I thought were definite enough. I thought from my experience that I knew what he meant. I went to the District Building to first obtain the ownership of the premises where Juror Kern lived. I believe Ruddy had given me the address as 1315 North Carolina Avenue, and I think I made a very crude memorandum of it on the back of some envelope. I reported to Ruddy everything I ascertained during this investigation. I first learned that the premises were owned by Kern. I then made inquiries as to where I could find out if there was any existing mortgage on this property. I was directed by the clerk to go to the Recorder of Deeds' office on Fifth Street, where I attempted to make a search of the books which were avail-

able there to the public, and after going back about two or three years I found nothing there that was recorded to correspond with the name Kern or with this property 1315 North Carolina Avenue. I asked one of the young ladies if it was possible to obtain the history of this house, as to what the mortgage might be, or who the tenants were, or who the landlord was, and she said this was not possible unless I knew when the property was purchased or taken over by the present owner. I returned to Wardman Park and made a verbal report to Ruddy that unless some definite time could be stated as to when this property came into the possession of Kern it was almost impossible, from the records available there to make a thorough investigation; but that I had satisfied myself that back to January 1, 1927, no release or satisfaction price had been issued against that particular house in the way of payment of the mortgage, trust receipts, or whatever it was." (R. 421-2.)

The witness **Browne** testified:

"Day asked me where he could look up a mortgage on a property, and I offered the services of our office, the Randall Hagner Company. Several days later, Day came to the office and got the information. I saw him in the office after that. I am not sure whether I saw him that day or the next day. I saw him in the office only once. At that time I did not discuss with him the information that was given to him relative to the mortgage. Later he spoke to me

about why he was looking up the information. If he did tell me who was the owner of the property I do not remember the name. He did not tell me where it was located. He did not tell me what he wanted it for before the trial was over. At the time he asked about the mortgage, I suggested that he come in the office and we could find out about the property, as to whether or not it had a mortgage on it, but he didn't say anything about what he wanted it for." (R. 389.)

The witness Browne further testified on cross-examination:

"There was nothing unusual in my visit to Woodward's house when I met Day there. It was in Woodward's house that Day first spoke to me about how to look up a mortgage. It was one afternoon on the way home when I dropped in there, and it was just an offhand question. I had seen him in Washington frequently before that. He asked me how to find out whether there was a mortgage on a piece of property. I suggested the recording office, and then I said that we would be glad to look it up for him in our office, that we were doing that every day, that we had a man there, Anderson, who would be glad to look it up for him. I told him that I would be glad, if he saw fit, to have him avail himself of the facilities of my office • • • I was out when Day came to my office for that information. He got the information • • • I talked to him afterwards about the informa-

tion. I asked him if he got the information and he said that he had. Later he told me why he wanted the information. He did not at that time tell me what the information was that he had received from my employees. He told me the information showed that there was a mortgage. I told him that he had better find out what the present mortgage was, that it was a building association mortgage. I told Anderson, our settlement man, to find out the present status of the mortgage. I think he did it, but I do not know. Later that evening Day volunteered the information why he wanted it." (R. 389-90.)

The witness **Dove** testified:

"Day came in and asked to see Brown. I told him Brown was not in. I asked him if there was anything I could do for him. He said that he would like to look up a piece of property, and we then went over to the plat book and looked up the property. He told me it was 1315 North Carolina Avenue. I turned to the plat book to find out. He was with me at the time. We got the lot and square number. He did not tell me who the owner of it was at that time. He wanted to know whether there were any encumbrances on the property, and I told him I didn't know, but could find out. I told him he could get it from the recorder's office. So he asked me if I could have that done for him and I told him yes; that we would have Anderson do it. I told him I would have to try to catch him downtown by phone, that he was out of the

office. I waited a while to see if I could get Anderson, and then I had to go out, so I gave the memorandum, of the lot and square number of the property, and asked the operator to get the information, or to have Anderson get the information. I got the information later that day. The operator gave me a memorandum of it when I came back. I do not know whether I gave the memorandum back to her or not. I had to leave the office again and Day had not been in, so I gave it back to her and asked her to give it to him, or give him the information when he came in. It showed a first mortgage on the property. I think in the amount of $4,000, although I cannot say exactly. Kern was the name of the owner of the property. The mortgage was held by some building and loan association. I do not remember the name of it. I was not asked to find out who was the holder of the mortgage. Day asked me to find out if there were any encumbrances on the property, and if so, what. He did not ask me to whom the mortgage was secured. He did not ask me who the mortgage was made to. When he came in I told him the amount of the mortgage, by whom it was held, and that he could not be positive whether that was the amount at present, because these mortgages were payable so much a month, or at different periods, as a rule. I showed him who the owner of the property was from the assessment book before I sent for the mortgage information. He then told me he wanted the report later that day. * * *"
(R. 390-91.)

The witness Dove further testified on cross-examination:

"I knew, when he came into the office, that he had, for many years, been an intimate friend of both Donald Woodward and Britton Brown. That knowledge made me a little more anxious to serve him, but I would have done so anyway. He asked me if Brown was in. I told him no and asked him whether there was anything I could do for him. He said he wanted to look up a piece of property. He gave me the address, and we looked it up on the plat book, to get the lot and square number. He did not give me the name of the owner. In fact, I showed it to him from the assessor's book. The plat book is in the back part of the office. It is perfectly open and not in any secret place. Our conversation was not subdued, but could have been heard by anybody who was near. While at the plat book I simply located the house on the plat, and then got the number of the lot and square, and then referred to the assessment book. I asked Mrs. Rawzer, the telephone operator, to get in touch with Anderson. Her desk is in the front part of the office, near the street. I went up to her to talk with her about Anderson. Day had then gone, because I had to go and get Anderson, and Day left. I told Day before he left, that I would get this information for him if I could locate Anderson downtown, but that sometimes we couldn't get him. Part of the information that I gave Day was that the amount recorded against the property was, as I remember, some-

where in the neighborhood of $4,000. I don't know positively whether that was the amount as of that date. It probably had been paid down, and might have been increased. I assumed that the mortgage had been paid off in part because it had been on for about a year. Most of these building associations pay by the month. Neither one of us before that had said anything about part of it being paid off. I think I volunteered the information. I don't recall whether Day said anything on that subject before. About a half hour after he went out I had to leave the office, and then I gave the memorandum to the telephone operator. I did not talk to Anderson until late that afternoon, when he came back to the office I did not talk to him about getting the information I conveyed to Day. I got that from the operator. It was in writing. I made a memorandum in my own handwriting, and as I had to leave the office again I gave her the memorandum that I had made, and told her if Day called or came in, to give him that information. That is the last I saw of the memorandum. It was not in that memorandum that I stated that I assumed that the mortgage had been, in part, paid off. That was made orally to Day later that afternoon, when he came in the office. The operator told me that he had called up on the phone, and that she had given him the information. I do not know whether or not he ever got the memorandum. I don't know what became of it after I gave it to Mrs. Rawzee. I don't know whether she gave it back and I tore it up. I am not clear

on that. I do not recall anything that Day said to me on the last occasion of his visit to my office that day, when he saw me. All I remember is that I gave him certain information. I do not recall anything that he said. I don't know whether we had any conversation. I think Brown was in at that time, and I think he went back to see him, and I simply volunteered that information, as I remember." (R. 392-3.)

The witness Dove further testified in response to questions by the court:

"There was only one encumbrance on the property we found from the personal records. That was a first trust of $4,000. That is the one I talked about. We distinguish between a first trust and a second trust. In this first investigation as to the encumbrances on the property, we found but one encumbrance. I did not ascertain that there were any others at that time upon that particular property. We have copies of the assessment book in our office. The plat books that we have in our office are supposed to be correct copies of the original plat books on record in the Surveyor's office. If I have the number of the premises I can get the precise block and square and lot. The assessor's book shows the ownership and the amount of assessment on the property. While Day was with me on this occasion in my office I consulted both the plat book and the assessment book, therefore ascertaining the lot and block description of the property, and also in whose name it appeared in the assessment book." (R. 393).

The witness, **Mrs. Irene Rawzee,** testified:

> "Mr. Dove asked me to locate Anderson and find out from him some information about a piece of property at 1315 North Carolina Avenue, in the name of Kern. • • • I gave him this information, and he called me back and gave me the information, and I wrote it on a piece of paper. I told Anderson to find out who held the trust, when it was obtained, and anything else he could find out about it. Anderson said the trust was gotten in 1922, by the Columbia Loan & Building Association, for $4,000. Made a memorandum of that and gave it to Mr. Dove when he came in. He gave it back to me and told me to keep it, because he thought he was going out again. I gave the memorandum that Mr. Dove gave me to Mr. Day, that same day when he came in. I had no conversation with him about it. • • •" (R. 394).

On cross-examination, the witness, Mrs. Rawzee, testified:

> "When Mr. Dove came to me and asked me to get in touch with Anderson, Mr. Day had been in the office just previous to that. I don't know whether he was there just at that minute. I don't know whether he had gone out before Mr. Dove came to me. I didn't see him there at the time. The instructions I gave Anderson were those that I got from Mr. Dove, to find out the encumbrance on this piece of property, and who

held the mortgage, and when it was obtained, and anything else he could find out. I don't know whether he particularly wanted to find out whether, if the mortgage existed, it had been paid off, either in whole or in part. Mr. Dove said to find out who held the mortgage, how much it was for, and when it was obtained, and who held the title. In the course of half an hour after I communicated with Anderson he called back. He was at the title company when he called. I wrote down all that he said. The information was that it was obtained in 1922, for $4,000, and the Columbia Building & Loan Association held the title. I handed that paper to Mr. Dove as he came back to my desk, and he just read it and gave it back to me. I ultimately gave it to Mr. Day, about an hour after Mr. Dove had seen it. Mr. Dove was not in the office when Mr. Day came in. He went back to see Mr. Brown, as I remember. Mr. Brown was in. I gave him the paper as he came in the door. He made no comments on it in my hearing. At no other time did I give Anderson any further instructions on this same subject. No one in the office talked with me about it, nor did Mr. Day." (R. 394-5).

The witness **Anderson** testified:

"I remember receiving a telephone message from Mrs. Rawzee asking me to get a report relative to certain property. I don't remember the exact date. I know it was sometime in October. I do not remember what the property

was that I was asked to look up. It came to me by lot and square number. I don't remember whether I was told what street the property was on. I never learned the street. I was at the District Title Company when I got the message, and I went to the records to get this information. I found there was a trust on with the American Building Association for $4,000. That is the one thing I remember. I do not remember when that was made. I should say that it was about two years off; the maker of the trust was named Kern. I don't remember his first name. I called Mrs. Rawzee back on the telephone as soon as I got the information." (R. 395.)

The witness Anderson testified on cross-examination:

"I made no other or further investigation at a later time. Later in the afternoon in the office, Mr. Brown asked me if I could find out the amount due and I called the building association to find out about it. Mr. Day was in the office at the time I called the building association for the amount due. I did not talk to Mr. Day about it. I never had a word of communication with him about it. Mr. Brown asked me to get the information relative to the balance due on the trust. He was in his office and I was sitting at my desk, which is next to his private office, just back of this door, and he called out to me to get the information. Mr. Day was there at the time with him. When I got the information I went in the door and told him. Mr. Day was there at that time." (R. 396).

The petition of the government further alleged:

(2) "That said operatives, acting under the direction of the said Charles G. Ruddy as aforesaid, investigated neighbors of said Juror Kern and reported that J. E. Vogts, a next-door neighbor of Juror Kern was reputed to be 'well fixed as to money,' having recently sold his home, and was represented to have made a thousand dollars in four days on one occasion as a result of granting favors relative to the shipment of corpses during the influenza epidemic while said Vogts was freight agent for two railroads." (R. 6).

The evidence bearing upon this claim is as follows:

The witness **Ruddy** testified:

"A report was made as to a man named Vogt, a neighbor of Kern, and communicated to Mr. Day. My instructions were for the men to take the numbers of any automobiles that might be seen with the subject. When we received these numbers of automobiles we had them looked up at the Registration Bureau. In this case an automobile appeared in the man's report and another investigator was sent to find out who it belonged to, and it was found to belong to a man named Vogt, whose address was not that of a neighbor of the juror. In some neighborhood gossip the facts that are in the report regarding Mr. Vogt were brought out. That was

all that was done in the matter, and it was not used for any other purpose." (R. 87).

The witness **O'Reilly** testified:

"Ruddy asked me to visit operatives Steer and Brennan, who, I believe, were at the Plaza Hotel. I went there and assigned Steer to find out who some people by the name of Vogts were. They owned an automobile which had been reported in a previous operative's report. I assigned Steer to find out who this man who owned the automobile was. I did this at the direction of Ruddy. He did not tell me why." (R. 409).

"I reported that I had assigned Steer from the Plaza Hotel to investigate this party known as Vogts." (R. 410).

The witness **Steer** testified:

"O'Reilly come to the Plaza about 1 o'clock. • • • O'Reilly gave me a license number, N-5259 and the address of G. J. Vogt, at 1411 North Carolina Avenue. He told me this car belonged to Vogt. 1411 North Carolina Avenue is about three blocks away from Juror Kern's home. I went out there and found Vogt had moved about six months ago to 1317 North Carolina Avenue, next door to Juror Kern. I learned from a lady who lived two doors from 1411 North Carolina Avenue that Vogt had moved. I went up and rang her door bell and fell into a general conversation, and gradually led her around to the Vogts. I asked her about

real estate values in that neighborhood. I did not tell her my name or business. I did not ask about the price of Kern's house. We were talking in a general way, and then we got talking about the Vogts. She said, 'Well, Mr. Vogt moved away from here six months ago, and he sold to the people who now occupy it for $7,750.' I was by myself. I asked her if she knew the people in 1411, and she said she did not as they were new people in the neighborhood. I just said, 'How are real estate values around here?' She asked me if I was thinking of buying a house, and I said that possibly I might, but I wanted to know what the values were. We talked along that line, and I asked her if she happened to know a family by the name of Vogt who used to live at 1411. She said they were good friends of hers, who had lived there for 8 or 9 years. I asked her what Vogt was doing now and she told me that he was freight agent for the B. & O., and worked with the Government at night as an accountant. She did most of the talking. She said he made $1,000 in four days during the influenza epidemic shipping bodies through. O'Reilly gave me no information about Mr. and Mrs. Vogt. He sent me there to get information. I left the lady and went to the vicinity of Vogt's home in order to get a good flash at him in case anything should come up later on in the operation concerning him. In case they wanted me to shadow him I would know him. O'Reilly had said nothing to me about the necessity of shadowing Vogt. He did not know anything about it. I do not know

what relation Vogt had to the case. O'Reilly did not ever tell me that Juror Kern's sister had married a man by the name of Vogt, and I never knew it. He gave me no explanation as to why he wanted me to go over and look up the Vogts. I do not know the name of the woman I talked to on this occasion. Her house was on the same side of the street as 1411, and two doors away from 1411, away in the direction of the Capitol. I interrogated one or two neighbors of the Vogts in addition to this woman. I do not know their names, or street addresses. The first place I went to I asked if the Vogts lived there. I knew they did not. I did not tell them who I was or what my business was. I did not have any conversation. If they said no I would go away. If they knew the Vogts they would tell me where they were. I did the same thing at the second place I went to. I would say that I wished I knew where the Vogts lived as I was very anxious to get hold of them. I did not say why I wanted to see the Vogts. That is the strong pretext I have reference to in my report. Aside from this woman, neither of the other two persons I talked to gave me any information about Vogt or Kern. The name of Kern was not mentioned at the places I went to. When O'Reilly gave me Vogt's address and car license he did not tell me where he got that information. I knew the night before that the Vogts did not live at 1411 North Carolina Avenue, but lived at 1317, next to Kern. I had been in that neighborhood the night before. The transactions of

this day do not bring back to my recollection anything further with regards to the instructions I had received the night before at the Mayflower. My first information from O'Reilly about the residence of Vogts came at the Plaza Hotel in Brennan's presence. The woman near 1411 gave me the information that Vogt is thought by neighbors to be fairly well fixed as to money. By neighbors I mean that woman. At the time I got my instructions from O'Reilly I was not told to get a complete report as to the financial condition of Vogt. I just got it to get general information. O'Reilly did not tell me what kind of information he desired on the Vogts. I stayed in the vicinity of 1317 North Carolina Avenue until 9:40 p. m. There was no other agent with me. I was watching just Vogt's house and not Kern's. I did not see Kern that night. I was not looking for him but for Vogt. I did not see Vogt. My instructions were not to remain there and cover Vogt on that occasion. I did that for my own information." (R. 538-40).

On cross-examination, the witness Steer testified:

"I do not know why I was instructed to make inquiries about the Vogts. I don't remember any information given me that Kern had been seen in Vogt's car. All I did was to follow O'Reilly's instructions to find out something about the Vogts. He didn't tell me anything about them. I was not instructed to find out

anything about their financial condition. I just wanted to get a general knowledge of who they were and what they did. The name of Kern was not mentioned at all. I first went to 1411 North Carolina Avenue to find Vogts. I thought they lived there. I found out from this elderly woman from whom I got this information, that they had moved to 1317 North Carolina Avenue. When I went out there to do what O'Reilly told me, I did not know they lived at 1317. He told me they lived at 1411. I only asked about them in a general way." (R. 544).

The witness **Kern** testified:

"I have a sister who married a man named Vogt about 20 years ago. Vogt is not living at this time. There is a family named Vogt living next door that is no relation to the Vogt family my sister married into." (R. 556-57.)

The petition contains the further allegation:

(3.) "That an investigation was conducted by the said operatives, under the direction of the said Charles G. Ruddy, with regard to the brother or father of the said Juror Kidwell, and reported in writing that the said brother's or father's place of business was located on questionable premises and that racing sheets were found in the trash thrown out of said premises." (R. 6.)

The evidence bearing on this claim is as follows:

The respondent **Day** testified:

"From my standpoint, Kern and Kidwell were not depicted in Government's Exhibit 1 as exactly the most model subjects. • • • The reports showed that Kidwell always was with 3 men. He left the court house with 3 men, or he joined 3 men, or there were 3 men waiting for him. Mr. Sinclair stated that he thought my suspicions might be well grounded; • • • that it might be a good idea to find out if Kidwell and Kern were really substantial citizens. He told me to keep 2 or 3 men and let the rest go. I got in communication with Ruddy on that subject either late Sunday afternoon or Monday morning. I told him to let all the operatives go immediately, and simply keep 2 or 3 men to work on the Glasscock episode and to continue on Kidwell and Kern. I just gave general instructions. I did not at that time, or at any other time, have in mind or contemplate the making of any contact with any juror, or to approach any juror directly or indirectly, or to affect any juror one way or another, or to accomplish a mistrial, or to accomplish any kind of influence over any juror; not under any conditions; I did not know anything about O'Reilly's visit to Kidwell's residence. I did not in any way suggest it. I did not know that he was going there before he went. I first knew he had been there when Major Gordon read in Court the original of the so-called edited report, which was given to me, relative to his investigation of Kidwell, the barber. I said

something to Ruddy about getting a designation on Kidwell's brother, the barber. I said, that according to the list of jurors, which is Government Exhibit 1, it stated that Kidwell had a brother, a barber. I wanted to know if he was employed as a barber in any of the prominent Washington Barber Shops because of the experience that I have had in going into barber shops, barbers are probably the greatest talkers in the world about their business and other people's business. I wanted to know if this man was employed in any of those shops where he might be promiscuously talking about this trial or in any way was expressing anybody's ideas about the trial, with the clients that might come in. I was not at Wardman Park on the afternoon of October 24. I arrived there after dinner, sometime between 8 and 11 p. m., and went to Ruddy's room. I saw a man standing by the bureau, and Ruddy and he were in conversation. I heard some of it; practically none of it. I heard this man, whom I afterwards found to be O'Reilly, and whom I did not know and was not introduced to at that time, say it was a disreputable barber shop, up on a hill in a disreputable hotel. I did not talk with O'Reilly at all myself." (R. 828-29.)

"Mr. Sinclair made inquiry from time to time about the course of the surveillance. I consulted with him in regard to the reports that I thought were of concern. I think I consulted with him about the inquiries which I directed to be made about the barber Kidwell. I could

not say whether it was before or after I had given the directions." (R. 834.)

The witness **Ruddy** testified:

"I assigned O'Reilly to investigate juror Kidwell's brother. O'Reilly made a report of his investigation and I gave that report to Mr. Day." (R. 87.)

The witness **O'Reilly** testified:

"There came a time when I went to the barber shop of a man by the name of Kidwell. And there came a time when I went to a house on U Street, Southeast, occupied by a family by the name of Kidwell." (R. 406.)

"Up to the 24th nothing was said to me, or any of the other operatives, about the Kidwell family." (R. 414.)

Speaking of Mrs. Mary Pearl Kidwell, the witness O'Reilly further testified:

"I would not state positively that I have seen that woman before. I think I may have seen her about 4:30 or 5:00 on October 24th at a house on U Street, in Anacostia. I think the number was 1637. My recollection is that there is a small porch in front of that house. I do not remember whether or not I had a top coat with me." (R. 415.)

Speaking of Edward J. Kidwell, Sr., the witness O'Reilly further testified:

"I recognize the gentleman who just came in. I saw him on October 24th about 5:00 P. M. at a barber shop in Congress Heights. It was 10 or 15 minutes after I had seen a lady in a house on U Street, Southeast.

On October 24 * * * Ruddy gave me instructions to find out where there was located in Washington a barber named Kidwell; to find out his place of business for the purpose of obtaining a description of him so as to be able to identify him, if necessary, at some later date. He told me to start my investigation in the Anacostia section of Washington. He said this barber was a brother of the juror. He did not say where this barber was located." (R. 415.)

"On the assignment given me by Ruddy about 3:00 o'clock I returned to the Mayflower where I referred to a city directory. I made inquiries as to what comprised the section of Anacostia. I had no idea of the location, and I know nothing about the streets or layout of Washington. I took from this city directory the names and addresses that I was told would appear in the Anacostia section. I went there alone, arriving about 4:15. I had heard the name Kidwell before, in what way I do not know. I had read in the papers that there was a juror by that name. When I went to Anacostia I went to a house on U Street, where I saw a woman. There was a conversation between us. Immediately after that conversation I went to the barber shop, which, I was informed in the conversation, was located in the Myrtle Hotel basement. It was there that I

saw this man whom I identified today. I had a talk with him and after that talk I returned to Wardman Park, where I saw Ruddy and Day in Ruddy's apartment. I verbally reported to Ruddy what had transpired when I was in Anacostia when I went to the U Street house and what transpired when I went to the barber shop. We were all standing in the room, which is perhaps 12 by 20 feet. Day was 4 or 5 feet from me. I do not remember where Ruddy was standing. This report was made in the presence of Day." (R. 416.)

On cross-examination the witness O'Reilly testified:

"I was sent to Anacostia for the purpose of locating and seeing a Kidwell known as Barber Kidwell. I was not asked or directed by Ruddy to locate or see or come in contact with Juror Kidwell. Ruddy told me that he thought that the barber, Kidwell, was a brother of Juror Kidwell. When I went to Anacostia I was upon the performance and execution of a particular mission that Ruddy had given to me. It was about 3:00 o'clock in the afternoon of the 24th of October. I did not seek to locate or to find out anything whatsoever about Juror Kidwell when I went there. I had never been in Anacostia before. Upon my arrival in that section that I was told was Anacostia, I made inquiries as to a barber named Kidwell in that section of individuals on the street along Nichols Avenue, somewhere after I crossed this bridge going

into Anacostia. I asked at least 5 or 6 people where Barber Kidwell lived. I was told by one individual that he believed there was a barber living on U Street named Kidwell, but he did not know what number. I referred to the list of Kidwells which I had compiled before leaving my hotel. I had in this list, as I remember, 3 or 4 who lived at number 1637 U Street which house I went to. *At the time I went there to locate Barber Kidwell I did not then know the name, or the full name and initials of Juror Kidwell.* When I went to this house, 1637 U Street, I rang the door bell. At no time did I go inside the house. I was not there more than 2 or 3 minutes. I stood on a small porch in front of the front door. When I rang the bell an elderly lady, resembling the lady I saw yesterday, came to the door. • • •

"The Myrtle Hotel is about 2 or 2½ miles from 1637 U Street. I had never heard of the existence of the Myrtle Hotel before I went to Anacostia on October 24. I first learned that there was such a hotel on October 24th, at about 4:45 P. M." (R. 428-29).

"When I went to that house in Anacostia I did not know that Juror Kidwell lived there. I ascertained sometime after I left Anacostia that this juror lived at 1637 U Street. I learned it when I returned to Wardman Park about 9:00 P. M. that night. I had no idea of it then. I did not know Juror Kidwell's initials. On the occasion of this trip to Anacostia I did not make any inquiry of anybody whatsoever between the time I went to Anacostia and the time I returned

from Anacostia about Juror Kidwell. Concerning Barber Kidwell, I was directed to learn his place of business; to go there and look at him for the purpose of being able to give another operative a designation on this man at a later date, if so desired. I found Barber Kidwell in his barber shop at the Myrtle Hotel. I did not go inside of the shop. I was there one minute." (R. 430).

"I only went to the door of the barber shop to look at him. I said something, and he said something, and I went away." (R. 431).

"I never did shadow Juror Kidwell, nor his father, nor any members of his family." (R. 432).

"Before going to Anacostia I compiled a list. I referred to the classified section of the Washington telephone book, looking for a barber by the name of Kidwell. I referred to the city directory, and having been informed as to what comprised the section of Anacostia, I confined myself to that section, and I compiled a list of probably 8 or 10 names. At the time I compiled the list I did not know the name of Juror Kidwell. I compiled the list about an hour before I went to Anacostia. On the day that I went there I first heard the name of Juror Kidwell mentioned about 3 or 3:15 that afternoon. Ruddy first mentioned Juror Kidwell to me on that occasion. It was at Wardman Park. I left there about that time. I next had my conversation with respect to Juror Kidwell on that day at about 9:00 P. M. at Wardman Park." (R. 433-34).

"When I returned from Anacostia I went to Wardman Park, where I saw Ruddy." (R. 435).

On redirect examination, the witness O'Reilly further testified:

"Prior to the time I went to the house on U Street I did not telephone to anybody to make inquiries. I have never heard of the name Teats before in my life. I stood on a small porch in the front of the front door, about 3½ or 4 feet wide. I do not know how long it was I was facing the door and not the porch." (R. 435).

On re-cross examination, the witness O'Reilly further testified:

"When I was in Anacostia I inquired of several people where Barber Kidwell lived. Those people were absolute strangers to me." (R. 437).

The witness, **Mrs. Mary Pearl Kidwell,** testified:

"I recall an incident that occurred while my son was a juror in the Fall-Sinclair case, when a man came to my house and knocked at the door. I went to the door and opened it and he asked if Mr. Kidwell was home. I said, 'Which Mr. Kidwell do you want to see?' He said, 'The Mr. Kidwell, the barber.' "I said, 'Mr. Kidwell is at the shop now, at the barber shop.' He said, 'Where is the barber shop?' I said, 'Congress

Heights, in the Myrtle Apartment.' He said, 'I do not know where the Myrtle Apartment is.' I said, 'Well, anyone at Congress Heights will show you.' He said, 'Very well.' He said, 'I have some papers here I want him to sign concerning the barber shop.' He said he did not want to have so many papers come in the first of the year to have to be signed. He said he was from the Health Department. He did not tell me who he was. He left and I have never seen him any more. I have told the Court, to the best of my recollection, all that he said to me and all that I said to him on that occasion. When this occurred, my son Eddie Kidwell was living at 1637 U Street. He did not come home from work that day. It was around 5 or 5:30, and was just beginning to get dark. I saw my son later that day about 6 o'clock." (R. 506-7).

"There was a talk or discussion between myself and my husband and my son, Eddie, about the fact of a man having been to the house, and about the fact of a man having been to the barber shop." (R. 508).

The witness, **Edward J. Kidwell, Sr.**, testified:

"I recall that during the time my son was a juror in the Fall-Sinclair case a man came to my barber shop in the Myrtle Apartment at 3109 Nichols Avenue, Congress Heights. He called there one evening between 7 and 8 o'clock and asked me if a Mr. Stewart ran a barber shop in Congress Heights. I told him no, that there had been a Mrs. Stewart who ran a beauty parlor

there, but she had left and gone to Anacostia. He thanked me, and I believe that is all he said, to the best of my recollection. That same night there was a talk between myself, my wife and my son, Eddie, about the fact that a man had been to my house earlier in the day, and about the fact that a man had been to my barber shop." (R. 509).

A careful consideration of the evidence bearing upon the investigation of the Kern mortgage and of Kidwell's surroundings clearly shows that it falls far short of any contact with either Kern or Kidwell by any one representing or acting for any of the respondents, or of any attempt on the part of any one representing or acting for any respondent to establish contact with either Kern or Kidwell; also, that whatever motive or purpose may be ascribed to those making the investigation,—whether simply to ascertain the standing and responsibility of the jurors, or something more than this,—it distinctly fails to establish the fact that there was any obstruction of or direct tendency to obstruct the administration of justice. Inasmuch as this evidence does not show any contact or attempt to establish contact with any juror in the case, we maintain that the sole question here presented is whether mere shadowing without contact or attempted contact constitutes a contempt of court.

The only other incident not embraced within the general subject of shadowing is the one relating to

the juror Glasscock (R. 5), the evidence as to this being admitted only as to the respondents Burns' (R. 621-22), and as this incident will be fully presented and discussed in the briefs of the respondents Burns' we have deemed it unnecessary to present it here.

Respecting the merits of the questions grouped under the four points here argued, we submit as we did in the beginning of the argument on these points that the law applicable falls within a very narrow compass, and is clearly announced by this court in the cases of *Marshall* v. *Gordon*, 243 U. S. 521; *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402; and *Ex Parte Hudgings*, 249 U. S. 378, which cases are discussed *supra*.

From the opinions in these cases it is manifest that there can be no contempt of court unless the evidence shows acts done which obstructed the administration of justice or which had a direct tendency to obstruct the administration of justice. The evidence in this case falls far short of the requirements as announced in the cases cited.

In the case of *Marshall* v. *Gordon*, *supra*, at p. 541, (243 U. S.) Chief Justice WHITE, discussing generally the power to punish for contempt, said:

> "The power is therefore but a force implied to bring into existence the conditions to which constitutional limitations apply. It is a means to an end, and not the end itself. Hence it rests

solely upon the right of self-preservation to enable the public powers given to be exerted."

The case of *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402, *supra*, clearly demonstrates that the principles of law for which we are contending are sound. In that case, Chief Justice WHITE, discussing the various statutes under which this case was prosecuted, said (p. 419):

> "• • • The provision (of Sec. 268 of the Judicial Code), therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given by summarily treating such acts as a contempt and punishing accordingly. *The test, therefore, is the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty,*—a conclusion which necessarily sustains the view of the statute taken by the courts below and brings us to the second question. • • •" (Italics ours.)

In the case of *Ex Parte Hudgings*, *supra*, at p. 383-4 (249 U. S.), Chief Justice WHITE says:

> "An obstruction to the performance of judicial duty resulting from an act done in the pres-

ence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted,—a principle which, applied to the subject in hand, exacts that *in order to punish perjury in the presence of the court, as a contempt, there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty.* * * * It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. But the mistake is, we think, evident, since it either overlooks or misconceives the essential charncteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing." (Italics ours.)

In the face of the authority established by the principles above enunciated, the trial court erroneously held that mere shadowing, without contact with, or consciousness on the part of the jury, in and of itself constituted contempt. (R. 847, 854-5.)

Points V and VI

(1) The Trial Court Erred in Excluding Evidence Offered by the Respondents to Show That for a Number of Years It Had Been the Usage and Custom of

the United States Government, in Cases Being Prosecuted by the United States in the Various Circuits Throughout the United States, to Have the Agents of the Bureau of Investigation of the Department of Justice Actually to Shadow Jurors While They Were Serving as Jurors in Such Cases; and (2) That the Respondent Day Knew That It Was the Custom and Practice of the United States to Have Representatives of the Department of Justice Shadow Jurors Actually Serving in the Trial of Cases Prosecuted by the United States in the Federal Courts in New York.

We will consider Points V and VI together.

The respondent Sinclair, in his answer to the petition of the government, admitted that he authorized the employment of the Burns International Detective Agency "to keep the jurors under observation, for the purpose of ascertaining what persons if any came in contact with said jurors, to the end that he might know if any person who might be desirous of seeing him convicted of the charges against him should endeavor in any way to seek contact with any of said jurors," and asserted that he believed "he had the lawful right to employ the said William J. Burns International Detective Agency for the purpose aforesaid;" and that he gave instructions to the respondent Day "that the operatives so employed should receive strict and peremptory instructions that they should not come in contact with, approach or converse with any of said jurors and

should not in any wise molest, interfere with, impede or influence any of said jurors in the performance of their duties as such." (R. 14-15.)

Further answering said petition, the respondent Sinclair stated (R. 15): "Having in mind the matters and things herein set forth, and believing that in cases involving great public interest the government from time to time had kept jurors under surveillance during the time of such trials, and, entertaining such belief that the government of the United States had exercised such right and privilege, he believed that he, as a citizen of the United States, had the same right and privilege." (R. 15.)

On the trial, respondents called as a witness **A. Bruce Bielaski** (R. 787), who testified that he was employed in the Bureau of Investigation of the Department of Justice from the time of its organization early in 1909 until some time in February, 1919; that he was Chief of the Bureau of Investigation from April, 1912, to February, 1919; that the Attorney General was his immediate superior while he was Chief of the Bureau; and that he reported to the Attorney General concerning the activities of that department; that the Bureau headquarters were in the Department of Justice in Washington, and that he had numbers of men working under him; that in addition there were what were known as headquarters in various parts of the United States, located practically in all of the larger cities, and that at each of those places he had in charge either

an agent or a division superintendent. (R. 788.) The witness was then asked the following question:

> "During the time that you were the chief of the Bureau of Investigation of the Department of Justice, do you know as a fact that it was the custom and practice of the Department, upon request being made by special agents in the field, or by the United States District Attorneys in the several districts of the United States, to assign men to shadow jurors who were sitting in cases in which the United States was prosecuting individuals or corporations for alleged crimes and offenses against the United States?" (R. 788.)

The question was objected to by counsel for the government, whereupon the respondent made the following proffer:

> "We make the offer that if the witness were permitted to answer he would testify that he did know that such a custom and practice had existed, and we offer to prove that on the ground, first, that the usage, extending over this period of years, had ripened into a custom, and that that custom became the law, and that being so there could be no contempt of Court, under the facts in this case as related to the question of shadowing. Your Honor has already ruled on that. In addition to that, I offer it on this ground: That in a case where a man is charged with contempt of Court he has the right during the proceedings investigating the

matter of contempt, to offer any evidence which may tend to purge him of the contempt, either by minimizing the character of the contempt or mitigating any punishment that might be imposed by the Court. We offer it on both grounds, may it please the Court." (R. 788-789.)

The objection was sustained, and exception was duly noted. (R. 789.) Whereupon, the following question was asked the witness:

"I ask the witness this question, subject to your Honor's ruling, if it is not a fact that during the time that you were the Chief of the Bureau of Investigation of the Department of Justice, from the period of 1912 to 1919, as you have testified, that reports were made by men in charge of special agents, or by special agents, of activities of these special agents in shadowing jurors who were selected and sworn in criminal cases in which the United States was prosecuting its citizens for alleged violations of the law, and that such reports were brought to the attention of the Attorney General who was in office at the time when such reports were received in the Department of Justice?" (R. 789.)

The question was objected to by counsel for the government. The objection was sustained, and an exception was duly noted. Whereupon the following question was asked the witness:

> "Did or did not the several Attorneys General who were in office during the time that you were in office, in your incumbency of your office in the Bureau of Investigation in the Department of Justice, know of or approve of the custom of shadowing empaneled jurors by the United States representatives?" (R. 789.)

The question was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. Proffer was made that the witness would say "They did," if permitted to answer. (R. 790.)

The witness **Mortimer J. Davis** was called on behalf of the respondents, and testified that he was employed in the Bureau of Investigation of the Department of Justice from January, 1918, to the middle of July, 1925, as a special agent. (R. 721.) The witness was then asked the following question:

> "Were you, as such investigator or special agent, employed in the shadowing of the petit jury in a case in which the United States was a party, during the actual trial of the case?" (R. 721.)

The question was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. Whereupon, the following question was propounded to the witness:

> "Are you familiar with the custom of the Department of Justice with respect to shadowing

jurors while cases are actually on trial?" (R. 721.)

The question was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. Whereupon, the following proffer was made:

> "I offer to prove by this witness, if your Honor please, that he is familiar with the practice of the Department of Justice, and the custom of the Department of Justice with respect to the shadowing of petit jurors in cases in which the United States is an interested party, while the case is actually on trial, and that that practice is—that he has known that practice since 1918, and that the practice is that in many cases, and for many years, it has been the custom of the Department of Justice and District Attorneys throughout the United States in the several jurisdictions to keep the jurors in cases on trial under surveillance, espionage, and shadowing whenever, in the opinion of the District Attorney, he thought it wise so to do, without any relation or respect to whether or not he had any reason to suspect the jury or any one of them." (R. 721-22.)

And thereupon the following proffer was made:

> "We also expect to show and make the proffer to prove by the witness that in the year of 1924, to be more specific, in the spring of 1924, in the case of U. S. v. John L. Phillips, and others,

tried in the Supreme Court of the District of Columbia, in the very room in which we are now sitting, at least eight men at all times, and sometimes more, being investigators of the Department of Justice, were employed and did keep that jury under complete, close surveillance, espionage, and shadowing at all times to such an extent that one of the investigators slept in the doorway of one of the jurors the whole night through. And that they took them up in the morning and put them to bed at night, and that this continued from the beginning of the trial until the end, a period of over two months. That the operatives were rotated from one juror to another by an intricate chart. That they not only shadowed the jurors, but they shadowed the lawyers and the witnesses as well. That some of the jurors became aware of the shadowing before the case was over, and that this fact was known to this witness. And that the United States officials to whom these men reported was then the present District Attorney, Major Peyton Gordon." (R. 722.)

William J. Burns, called as a witness for respondents, testified that he was appointed in the Secret Service of the Treasury Department about 1890; that he remained in that position until 1903, when he was transferred to the Interior Department, where he organized a group of special agents for the purpose of investigating the land frauds in California and Oregon; that he was there from 1903 until 1906. • • • That in August, 1921, he was ap-

pointed Director of the Bureau of Investigation of the Department of Justice, and resigned in the latter part of 1924. (R. 744.) The witness was then asked the following question:

> "Do you know whether or not there existed in the Department of Justice a custom, with respect to shadowing and observing of jurors in cases pending in the courts of the United States?" (R. 751.)

The question was objected to by counsel for the government; the objection sustained, and an exception duly noted. The witness was then asked the following questions (R. 751-2): "Do you know whether or not there was such a custom? How long has such a custom been maintained? Had or had not that custom been universal throughout the United States in the courts of the United States during that time? Is it not a fact, from your personal knowledge, that there existed in the Department of Justice a usage and custom to observe and shadow jurors in criminal cases, prosecuted by the United States, where there was no reason to suspect a lack of integrity on the part of the jury, and the jury were unsuspecting of the fact that they were being shadowed?" To all of which questions objections were made by counsel for the government, objections sustained, and exceptions duly noted.

Whereupon, counsel for the respondents made the proffer to prove that if the witness were permitted

to answer he would testify that he did know that such a custom existed; that it had existed for more than thirty years within his knowledge; that it had been the universal custom; that he knew that such a custom and usage existed in the beginning; and that it had covered more than a period of 25 years at least. (R. 751-752.)

The respondent **Henry Mason Day**, called as a witness, testified that on October 18, 1927, he knew that W. J. Burns had been for many years Chief of the Bureau of Investigation of the Department of Justice of the United States. Thereupon, he was asked the following question:

> "On that day did you know whether or not it was the custom of the United States District Attorney in the City of New York to shadow, through representatives of the Department of Justice, jurors engaged in the trial of criminal cases in the United States Courts in that city?" (R. 822.)

The question was objected to by counsel for the government; the objection sustained, and an exception duly noted. Proffer was made that the witness, if permitted to answer, would say that he did know of such a custom. (R. 822.) Whereupon, the following question was asked:

> "At that time was it or was it not a matter of public common knowledge in the City of New

> York that the custom of the United States District Attorney in the trial of criminal cases in the United States Courts in the City of New York to shadow juries after they were empanelled and sworn, and during the trial?" (R. 822.)

The question was objected to by counsel for the government; the objection sustained, and an exception duly noted. Proffer was made that the witness, if permitted to answer, would say that it was a matter of common and general knowledge. (R. 822.)

Whereupon, the witness was asked the following question:

> "Did you or did you not know of instances in New York, through public discussion, in which jurors had been followed, jurors empanelled in the United States Court there, by representatives of the Government and the Department of Justice, during the trial?" (R. 822.)

The question was objected to by counsel for the government; objection sustained, and an exception duly noted. Proffer was made that the witness, if permitted to answer, would testify that he did. (R. 822-23.)

In addition the respondents called as witnesses a number of former employes of the Bureau of Investigation of the Department of Justice, by whom the respondents offered to prove the custom, usage and

practice of the government in the shadowing of jurors during the time they were serving as such in the trial of cases in which the United States was interested. **John R. Kissel** testified that he was employed in the Bureau of Investigation of the Department of Justice from November, 1921, to December, 1925, as a special agent. (R. 712). By this witness the respondents offered to prove that he had shadowed jurors for the government in the trial of a case in Pittsburgh, Pa. (R. 713); also, in New York. (R. 715). **Felix Quigley** testified that he was employed in the Bureau of Investigation from March, 1922, to April, 1927. (R. 716). By this witness the respondents offered to prove that he had shadowed jurors for the government in New York City and Pittsburgh. (R. 717). **Daniel F. Dwyer** testified that he was employed in the Bureau of Investigation from March, 1922, to April, 1927. (R. 719). By this witness the respondents offered to prove that he had shadowed jurors for the government in New York and Pittsburgh. (R. 720). **Harry J. Jentzer** testified that he was employed in the Bureau of Investigation from 1906 to 1926. (R. 723). By this witness the respondents offered to prove that he had shadowed jurors for the government in the so-called Sugar Fraud Case in 1907; also in cases in Buffalo, N. Y., Cincinnati, Ohio, and New York City. (R. 725). **Dan E. Tatom** testified that he was employed in the Bureau of Investigation from the early part of 1918 until Novem-

ber, 1921. (R. 790). By this witness the respondents offered to prove that he had shadowed jurors for the government in New York City, (R. 791), and in Pittsburgh, (R. 792). **Walter C. Foster** testified that he was employed in the Bureau of Investiation from April 17, 1917, until May 6, 1926. (R. 793). By this witness the respondents offered to prove that he had shadowed jurors for the government in Philadelphia, (R. 795), and in the so-called Gray's Harbor Shipbuilding Case which was tried in Seattle, Wash., in 1920. (R. 795-796). **Edgar B. Speer** testified that he was employed in the Bureau of Investigation from the spring of 1917 until the spring of 1920. (R. 797). By this witness the respondents offered to prove that he had shadowed jurors for the government in the case of United States vs. Barrett, tried in the Western District of Pennsylvania in 1918 or 1919, (R. 798); and that he had also shadowed the grand jurors in that case. (R. 799.) **Bernard Kahn** testified that he was employed in the Bureau of Investigation from March, 1917, to November, 1924. (R. 799). By this witness the respondents offered to prove that he had shadowed jurors for the government in Columbus, Ohio, (R. 800); in Chicago, in several cases tried in that jurisdiction in 1923 and 1924, (R. 801-802); and in a case tried in Oklahoma City in February, 1923 (R. 802). **J. Gordon Shuey** testified that he was employed in the Bureau of Investigation from September, 1918, until January 1, 1925. (R. 805).

By this witness the respondents offered to prove that he had shadowed jurors for the government in a case tried in the District Court for the Western District of Pennsylvania. (R. 806).

In addition, the respondents called as witnesses **Albert G. Adams,** who was employed in the Bureau of Investigation from January, 1910, to March, 1919, (R. 802); **James W. Kemp,** who was employed in the Bureau from 1914 to 1917, (R. 803); and **Joseph F. Kroppy,** who was employed in the Bureau from July, 1914, until September, 1924, (R. 804). By all of these witnesses the respondents offered to prove that it had been the custom and practice of the government to have investigators of the Department of Justice shadow jurors who had been sworn and empaneled in the trial of cases in which the United States was interested, during the time they were serving as such jurors. But the court excluded the evidence so proffered.

It is undisputed in this case that there is no law forbidding the shadowing of a jury by either the government or the accused in the trial of a criminal case. The act of shadowing a jury, when considered in connection with a charge of contempt of court, must be considered and measured precisely the same as any other act or acts which might be claimed to have constituted a contempt, the test being:—did the act or acts obstruct the administration of justice or have a direct tendency to obstruct the adminis-

tration of justice. The most that the trial court could spell out of the act of shadowing was a conclusion that it had an indirect tendency in and of itself to obstruct the administration of justice. In considering whether it had such a tendency we think it was necessary to consider the usage and practice which had been established by the government of the United States with respect to the shadowing of juries in criminal cases. Surely, if for twenty-five years or more the government of the United States had pursued the practice of shadowing jurors sitting in criminal cases on trial in the various circuits of the United States, it must be assumed that the government had found from such practice that shadowing had no tendency to obstruct the administration of justice, as held by the trial court in this case; and since the holding of the trial court really rests upon the speculative conclusion that shadowing had an indirect tendency to obstruct the administration of justice, and not upon any act or acts establishing such obstruction or direct tendency to obstruct, evidence of the practice and usage of the government of the United States was relevant and material, and would be helpful in determining whether this conclusion was one which logically and legitimately could be drawn from the very act of shadowing itself. There being no fact establishing contact, and it being solely a question of the effect of the shadowing without contact, and the trial court having based its holding upon mere shadowing as such, the evi-

dence as to the practice and usage of the government itself for the past twenty-five years or more was important and relevant, because it must be assumed that the government during that long period did not find that shadowing in and of itself, without contact, tended directly to obstruct the administration of justice.

The trial court not only excluded all evidence offered by respondents to prove the custom, practice and usage of the Department of Justice with respect to the shadowing of juries in the various circuits of the United States sitting in criminal trials, but, after the court had adjudged the respondents guilty of contempt, when such evidence was offered on the question of mitigation, it was again rejected. (R. 855-856.)

Point VII.

The Trial Court Erred in Excluding Evidence Offered by the Respondents to show What the Witness O'Reilly Actually Said on the Occasion of His Visit to the Home and the Barber Shop of the Father of the Juror Kidwell.

The witness, **Frank J. O'Reilly,** called by the government, testified on cross-examination, as follows:

> "I was sent to Anacostia for the purpose of locating and seeing a Kidwell known as Barber Kidwell. I was not asked or directed by Ruddy

to locate or see or come in contact with Juror Kidwell. Ruddy told me that he thought that the barber, Kidwell, was a brother of Juror Kidwell. When I went to Anacostia I was upon the performance and execution of a particular mission that Ruddy had given to me. It was about 3 o'clock in the afternoon of the 24th day of October. I did not seek to locate or to find out anything whatsoever about Juror Kidwell when I went there. I had never been in Anacostia before. Upon my arrival in that section that I was told was Anacostia, I made inquiries as to a barber named Kidwell in that section of individuals on the street along Nichols Avenue, somewhere after I crossed this bridge going into Anacostia. I asked at least 5 or 6 people where Barber Kidwell lived. I was told by one individual that he believed there was a barber living on U Street named Kidwell, but he did not know what number. I referred to the list of Kidwells which I had compiled before leaving my hotel. I had in this list, as I remember, 3 or 4 who lived at number 1637 U Street which house I went to. At the time I went there to locate Barber Kidwell I did not then know the name, or the full name and initials of Juror Kidwell. When I went to this house, 1637 U Street, I rang the door bell. At no time did I go inside the house. I was not there more than 2 or 3 minutes. I stood on a small porch in front of the front door. When I rang the bell an elderly lady, resembling the lady I saw yesterday (Mrs. Mary Pearl Kidwell), came to the door." (R. 428-429.)

The witness O'Reilly was asked the following questions in connection with his visit to the house on U Street, and made the following answers:

> "Q. Mr. O'Reilly, when you went to the house on U Street, I believe you said it was 1637, and you met Mrs. Kidwell, will you state to the Court what inquiry, if any, you made of her and what remark or question you addressed to her?
>
> "A. In answer to my ring of the bell at this house, this woman answered the door. I asked her if there was a tenant in that house named Kidwell that was a barber.
>
> "Q. Named what?
>
> "A. Named Kidwell that was a barber." (R. 428.)

Whereupon, counsel for the government moved to strike out the questions and answers; the motion was granted, and an exception was duly noted. (R. 428.)

The witness O'Reilly was asked the further question:

> "Q. Did you ask her, for or anything about Juror Kidwell?
>
> "A. I did not." (R. 429.)

Whereupon, counsel for the government moved to strike out the answer; the motion was granted, and an exception was duly noted. (R. 429.)

Thereupon, the witness O'Reilly was asked the further question:

"Q. Now, do not answer this question until his Honor states that you can. Why did you go from 1637 U Street to the barber shop at the Myrtle Hotel?" (R. 429.)

This was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. (R. 429.)

The witness, continuing, testified as follows:

"When I went to that house in Anacostia I did not know that Juror Kidwell lived there. I ascertained some time after I left Anacostia that this juror lived at 1637 U Street. I learned it when I returned to Wardman Park about 9:00 P. M. that night. I had no idea of it then. I did not know Juror Kidwell's initials. On the occasion of this trip to Anacostia I did not make any inquiry of anybody whatsoever between the time I went to Anacostia and the time I returned from Anacostia about Juror Kidwell. Concerning Barber Kidwell, I was directed to learn his place of business; to go there and look at him for the purpose of being able to give another operative a designation on this man at a later date, if so desired. I found Barber Kidwell in his barber shop at the Myrtle Hotel. I did not go inside of the shop. I was there one minute." (R. 430.)

Whereupon, the witness O'Reilly was asked the following question:

> "Q. Now, don't answer this question: Did you ask him any question concerning anyone?" (R. 430.)

This was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. (R. 430.) Whereupon, the witness was asked the following question:

> "Q. Now, don't answer this question: Was Juror Kidwell's name called or mentioned in that conversation either by you or Barber Kidwell?" (R. 431.)

This was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. (R. 431.)

The witness O'Reilly was asked the further question:

> "Q. Isn't it true that on the occasion that you saw Barber Kidwell, that not one word was said about or concerning in any way with reference to the juror?" (R. 431.)

This was objected to by counsel for the government; the objection was sustained, and an exception was duly noted. (R. 431.)

The government had called the witness O'Reilly and proved his visit to the home of Barber Kidwell (R. 428-29), followed by his visit to the shop of the said Kidwell (R. 430); and the record shows that

Juror Kidwell lived at the home of Barber Kidwell, his father (R. 507), and that the latter fact was not known to the witness O'Reilly at the time of his visit to the home of Barber Kidwell (R. 430). The effort of the government plainly was to show a visit by the witness O'Reilly, one of the Burns' operatives, to the home of the Juror Kidwell with a view of creating the impression upon the court that he had some evil purpose or that some sinister motive actuated the visit. These questions which were asked, to which objections were made and sustained, were designed and intended to show, and the answers would have shown, that the witness O'Reilly did not know that Juror Kidwell lived at the home of Barber Kidwell, had no intention of establishing contact with Juror Kidwell, of speaking with him or approaching him, and that he had no intention of making any inquiry concerning Juror Kidwell, either at his home or at the barber shop of Barber Kidwell. Surely, the respondents were entitled to show the facts which would relieve respondents of the suspicion or imputation sought to be put upon them by the government by a half-truth.

Point VIII.

The Trial Court Erred in Receiving, Over the Objections of the Respondents, Evidence by the Witness Kidwell, Jr., of Conversations With an Uniden-

tified Man in the Museum Grounds and at the Door of the Courthouse.

In the course of the trial, **Edward J. Kidwell, Jr.**, was called as a witness on behalf of the United States. (R. 480.) He testified, "I recall an incident while I was a juror when I was sitting on a bench in the Museum Grounds a man came up and went behind a tree and sat on the ground for a while. He was sitting right under the tree about 10 or 15 feet from the bench, • • •." (R. 482.) The respondents objected to the testimony concerning this incident on the ground that unless it be shown that the man who sat beside the witness was an agent of the Burns Detective Agency it would be immaterial as to what was done by any one else. The objection was overruled by the court and an exception was noted. (R. 483.) Subject to the objection of the respondents, the witness in undertaking to describe the man testified, "To the best of my memory he was a man about my height with dark hair and rather dark clothes. I did not pay particular attention to him at the time. He wore a hat." (R. 484.) Concerning this incident, subject to the objection of respondents, the witness further testified:

> "The man walked down the path from the 9th Street entrance until he got, I would say, within 25 feet of the bench on which I was sitting, then turned from the bench and went and sat under a tree directly in back of this bench; be-

fore he went back to the tree he stopped there, he just looked at me on the bench; there was no one else in sight that I could see any closer than B Street at the Market. He went directly from the path to the bench in back of me, the bench was 10 or 15 feet from the tree, I had a lunch prepared by my mother which I ate, and after that I was smoking a pipe; the man got out from under the tree and came over and sat on the bench beside me." (R. 484.)

The respondents further objected on the ground that there had been no identification of the man as to whose actions the witness had testified, and that the evidence should not be received until its relevancy first appeared. The objection was overruled by the court, and an exception noted. (R. 485.)

Continuing, the witness testified:

"The man came directly from under the tree and sat beside me on the bench and asked me did I have a cigarette, and I told him no I didn't have a cigarette. He asked me did I have the makings. So I told him I had tobacco, and I handed him a pouch of tobacco. He asked me what kind of tobacco I smoked. I told him it was Prince Albert. And he rolled a cigarette from the tobacco which I gave him, and handed me the pouch back and thanked me for it. He then said 'It is nice weather we are having for this time of year.' I told him that it was and he never said any more to me nor I never said any more to him. I stayed there for about ten

minutes, and then I got up and left him sitting on the bench. I have told all that was said." (R. 486.)

The witness Kidwell further testified:

"I do not know the name of the man who approached me in the Museum Grounds on the occasion I have testified about." (R. 489.)

The respondents moved to strike out all of the testimony of the witness concerning this incident, which motion was denied by the court, and exception noted. (R. 486.)

The witness Kidwell further testified that during the time he was serving as a juror, when he was returning to the courthouse he was approached by some unidentified man who spoke to him at the west door of the courthouse. Concerning this incident, the witness testified:

"The instance to which I have referred about the man speaking to me near the west end of the Courthouse was as follows: I was coming back from lunch and was standing on the sidewalk when a man came up to me and said, 'How can I get in there to hear that damn thing'? He said, 'I have been waiting around all morning and have not been able to get in for some reason or other.' But I never made any reply to him at all. He then said, 'What are they doing in there?' Or something like that. I didn't answer him at all, and he said, 'What do you think of that case,' or 'that trial'—I am not sure

of his exact words, whether—

"Q. That is all right. Please explain. You heard what the Court said.

"he said 'case' or 'trial,' I didn't say anything at all. I just walked away from him and came back into this room (indicating the jury room). Jurors Heaton and Bailey were not in there when I came in, they came in later. There was no one in there when I came in." (R. 490-491.)

The respondents objected to this testimony and moved to strike it out on the ground that there was no evidence to show that the man who spoke to the juror was in any wise connected with the respondents or that the respondents were responsible for the actions of this unidentified man. The objection and motion to strike were overruled by the court, and exception noted. (R. 491-492.)

In the course of the testimony of the witness, Kidwell, government co sel endeavored to have the witness identify Barton P. Stewart, one of the operatives of the Burns Detective Agency, as the man who sat beside him on the bench in the Museum Grounds, but the witness testified that he did not recognize Stewart as being that man. (R. 490.) The witness further testified that he did not remember seeing either Ruddy, O'Reilly, Klein or Stewart, operatives of the Burns Detective Agency, at any time during the trial of the Fall-Sinclair Case; that he did not remember seeing any of these men around the courthouse grounds or in the courthouse while

he was a juror, and that he never saw any of the other operatives of the Burns Agency. (R. 487.)

He further testified that he had not seen since and did not know the man who spoke to him at the west door of the courthouse. (R. 487.)

We submit that before any of this evidence could properly have been received it was essential that the identity of the men in question should have been established. It is manifest from the evidence of the witness that he could not identify either of the men whose actions he was permitted to testify about. In the absence of evidence showing that these men were in some way connected with or acting for the respondents, any evidence as to what occurred either in the Museum Grounds or at the west door of the courthouse was utterly irrelevant and should have been excluded. It being obvious that the evidence was not admissible, we submit that it requires no argument to demonstrate that the court committed error in overruling the objections of respondents.

Point IX.

The Trial Court Erred in Receiving, Over the Objection of the Respondents, Evidence of the Witnesses Kidwell, Jr., and Heaton, as to Conversations Among the Jurors.

The witness, **Edward J. Kidwell, Jr.**, when testifying as a witness for the government, was asked:

"Do you recall an occasion when you were serving as a petit juror that there was a talk among the jurors on the subject of being watched or being shadowed? Do you remember such an incident?" This was objected to by respondents on the ground that it was immaterial and irrelevant. The court stated that he would permit the witness to answer categorically, and the witness answered, "Yes." (R. 498.) The witness testified that this occurred some time during the trial, about two weeks after the trial started; that it occurred in the first room on the east side of the corridor of the courthouse where the jurors assembled. (R. 498-9.) The respondents objected to this testimony and moved to strike out the answer "Yes" of the witness on the ground that it was utterly irrelevant and hearsay. The court denied the motion to strike and an exception was noted. (R. 499.)

Subject to the objection of the respondents, the witness testified that he did not know exactly who was present on that occasion, but there were about 6 or 8 jurors or probably more there, and he thinks that this occurred one morning when they sent the jury out of the room during an argument on a question of law; that the jurors Herzog, Holmes and Kern were there, and that they participated in that talk. (R. 499.) The witness did not testify as to any conversation between the jurors on that occasion, but merely answered that there was such a talk.

The witness, **Bernice K. Heaton,** over the objection of the respondents, testified, "I was present during the time that the trial was in progress, in the conference room of the jurors, when the subject of being watched or shadowed or followed was mentioned or discussed." (R. 512.)

We maintain that it was error for the court to admit this evidence over the objection of the respondents. It is manifest that this evidence was offered by the government for the purpose of trying to make it appear that the jurors were conscious of the fact that they were being shadowed. If any of the jurors believed that he was being shadowed the only way that this properly could be established would be to have the juror testify to the facts which gave rise to the belief. A conversation such as that indicated by the predicate of the question, whether there was talk among the jurors "on the subject of being watched or being shadowed," affords no evidence that the jurors were conscious of the fact that they were being shadowed. The mere fact that there had been a conversation between the jurors on the subject of shadowing does not in and of itself afford any evidence against the respondents. On the contrary, members of the jury were called as witnesses, and none of them testified that they were at any time conscious of the fact that they were being shadowed.

Bernice K. Heaton, called as a witness by the government, testified that she served as a juror, but she was not asked whether she was conscious of the fact

that she was being shadowed. (R. 511-512). **Mrs. Annetta L. Bailey,** called as a witness by the government, testified that on October 28, during the time she was serving as a juror, while she was in the Convention Hall Bowling Alley she was aware that certain men were looking at her. (R. 510-511). This was received over the objection of the respondents, notwithstanding the fact that the record showed that the shadowing of Mrs. Bailey ended on October 21 (R. 272, 549), and there was no evidence to show that the men who were looking at her on the occasion when she was at the bowling alley were in any wise connected with the respondents. **Gardner P. Grenfell,** called as a witness by the government, testified that he was one of the jurors, but he was not asked any questions as to whether he was conscious that he was being shadowed. (R. 557-558). **John Phillip Kern,** called as a witness by the government, testified that he was a juror in the case, but he was not asked whether he was conscious that he was being shadowed. (R. 556-557). **Conrad J. Herzog,** called as a witness by the government, testified that he was a juror in the case, and that he was not aware that he was being shadowed. (R. 560). **Edward J. Kidwell, Jr.,** called by the government, testified that he was a juror in the case, but his testimony (R. 480-506) does not show that he was conscious that he was being shadowed during the time he was serving as a juror. He testified:

"On occasions of going in and out of the courthouse I never saw any of the Burns Agents that I know of; if they were there I didn't know who they were; I never at any time during the jury trial saw men whom I now know are Burns Agents." (R. 488.)

William H. Goucher (Juror) testified:

"At no time during the 23rd day of October was I aware of being followed or shadowed by anyone whatever." (R. 771.)

In an earlier part of this brief we have argued that there was no evidence before the court to show that any of the operatives of the Burns Detective Agency ever approached, talked to or came in contact with any of the jurors. We maintain that in the absence of any evidence that the jurors were conscious of the fact that they were being followed by the operatives of the Burns Detective Agency it was error for the court to admit evidence of the fact that there was a conversation among the jurors as testified to by the witnesses Kidwell, Jr., and Heaton.

Point X.

The Trial Court Erred in Receiving, Over the Objection of Respondents, Evidence of the Witnesses Kidwell, Jr., and His Mother, Mary Pearl Kidwell, as to Conversations Between the Juror Kidwell and His

Mother and Father During the Time He Was Serving Upon the Jury.

The witness, **Edward J. Kidwell, Jr.,** testifying as a witness for the government, was asked the following question: "During the time that you were serving as a petit juror in the Fall-Sinclair criminal case, state whether or not you did report or talk to your mother and father about these various incidents that you have described here in court, the man approaching you at the west end of the courthouse; the museum grounds incident; and the fact of the man having been to the house, and to the barber shop?" (R. 500-501), to which question the respondents objected on the ground that it was irrelevant; the objection was overruled, and an exception noted. (R. 501.)

The witness answered "Yes, sir." Subject to the objection and exception of respondents, the witness further testified:

> "Q. Mr. Kidwell, could you say whether or not you mentioned the museum grounds incident; the incident at the west end of the courthouse, and such as that?
>
> "A. Yes, sir.
>
> "Q. Now, which of the incidents did you mention to your mother?
>
> "A. The museum incident and the incident at the west end of the court, I think." (R. 501.)

The witness was further interrogated as follows:

"Q. Was the incident at the Museum Grounds, and the incident at the west end of the courthouse—were they the only incidents that you mentioned to your mother?

"A. Those are the only ones I remember.

"Q. Now, I ask the same questions with regard to your father. What incidents did you mention to your father at the time you were serving as a juror?

"A. I don't think I mentioned anything to my father.

"Q. Now, I specifically ask you whether or not, without going into anything that was said by any of you, whether or not you and your mother talked on the subject of the man's having been at your home at the time that you were serving as a petit juror?

"A. Yes, sir.

"Q. And state whether or not on that same day when you discussed the subject with your mother, you later on discussed the same subject with your father?

"A. I did that night.

"Q. On that same night, state whether or not you discussed with your father the subject of the man's having been at your father's barber shop in Congress Heights.

"A. Yes, sir." (R. 502-503.)

To each of the foregoing questions the respondents objected, and the objections being overruled, exceptions were noted. (R. 502-503.)

The witness, **Mrs. Mary Pearl Kidwell,** called as a witness by the government, testified concerning the visit of O'Reilly, one of the Burns operatives, to her home at 1637 U Street. (R. 506-507.) Whereupon, she was interrogated as follows:

> "Q. Just answer this question yes or no. When you saw your son that time, did you tell your son what had occurred about the man coming to the house?
>
> "A. Yes, sir.
>
> "Q. Do not say what your son Eddie told you. When you told your son that, did your son make a reply to you on that subject?
>
> "A. Yes, sir.
>
> "Q. Now, on the same day or night or evening when your husband, Edward Kidwell, Sr., came home—just answer this yes or no also—did you tell your husband in the presence of your son, Eddie, about the fact of the man having come to the house?
>
> "A. Yes, sir.
>
> "Q. State whether or not on that occasion, in the presence of your son and husband, your husband said something about a man having come to the barber shop. Just answer yes or not.
>
> "A. Yes, sir. (R. 507-508.)

To each of these questions the respondents objected on the ground that they were irrelevant and immaterial; and, the objections being overruled, exceptions were noted. (R. 507-508.)

We submit that it was error for the court to admit this evidence. We are at a loss to understand upon what theory this evidence can be said to be relevant. It is obvious that the questions called for hearsay testimony. It was certainly not admissible upon any hypothesis that it was a part of the res gestae of the transactions which were being inquired into in the contempt proceeding. The persons among whom the conversations occurred were strangers to the record. The conversations related to the incident which occurred to the witness Kidwell, Jr., in the Museum Grounds, to the incident at the west door of the courthouse, and to the visit of O'Reilly to the home and barber shop of the father of Juror Kidwell. If the witness Kidwell had had such a conversation with some stranger instead of with his mother and father surely it could not be argued that such conversation would be evidence. The mere fact that the conversation occurred between Juror Kidwell and his mother and father certainly does not alter the rule of evidence. It seems to us that the error is so obvious that argument is unnecessary.

CONCLUSION

It is submitted that the judgment of the trial court is obviously erroneous and should be reversed because there is no evidence showing any act done by any of the respondents which obstructed the ad-

ministration of justice or which had a direct tendency to obstruct justice, and in the absence of such evidence the court was without power to adjudge the respondents guilty of contempt; that the judgment of the trial court should be reversed and remanded with directions to dismiss the petition and discharge the respondents.

Respectfully submitted,

MARTIN W. LITTLETON,
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Attorneys for Appellant,
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March 30, 1929.



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IN THE

Supreme Court of the United States

No. 748.

HARRY F. SINCLAIR, ET AL.,

vs.

UNITED STATES.

BRIEF FOR APPELLANT, HENRY MASON DAY.

DANIEL THEW WRIGHT,
PHILIP ERSHLER,
Attorneys for Henry Mason Day.

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IN THE

Supreme Court of the United States

No. 748.

HARRY F. SINCLAIR, ET AL.,

vs.

UNITED STATES.

BRIEF FOR APPELLANT, HENRY MASON DAY.

An appeal from an order of the Supreme Court of the District of Columbia adjudging the appellant guilty of contempt of Court and sentencing him to imprisonment in the common jail, is here on certification from the Court of Appeals of the District of Columbia.

STATEMENT OF FACTS.

H. F. Sinclair was President of the Sinclair Consolidated Oil Company and of a number of its subsidiaries; Mr. Day was his intimate associate and representative in the executive affairs of the Sinclair interests, answering much of his mail and attending to many matters of detail in a business of such magnitude

as rendered it impossible for all such to receive the personal attention of the President.

Mr. Day was in close daily contact with President Sinclair (R. 820) and the one through whom Mr. Sinclair's orders in matters of importance were executed. Mr. Sinclair was under indictment in the Supreme Court of the District of Columbia for conspiracy to defraud the United States, the trial being set to occur on October 17, 1927. The continual presence of Mr. Sinclair in Washington during the protracted period of the trial required the presence in Washington also, of a substantial part of his executive force including a number of secretaries in order that the commercial, domestic and foreign affairs of the numerous interests which were in his hands for discharge might continue to go forward; amongst these executives was Mr. Day; whose presence in Washington was especially necessary because of the unavailability of Mr. Sinclair for business purposes during the business hours of the day because of his presence in the Court room during the trial. (R. 823.)

The experiences of Mr. Sinclair during the recent past had made both him and Mr. Day fearful and apprehensive lest improper and lawless efforts might be made to corruptly influence one or more members of the trial jury to deny him a fair trial. Nor could any other man who had endured his experiences have apprehended or feared otherwise. Congress in its wisdom had created special prosecutors, removing his prosecution from the control of the public officers maintained by the law of the land for the performance of such duties and responsible to the people for their correct discharge; had obliterated by special legislation long established principles of criminal procedure

which the experience of humanity had evolved as essential to the safety of the citizens, amongst them denuding the Court of Appeals of the District of Columbia of an existing jurisdiction to determine his appeal then pending before it, in which appeal the sufficiency of the very indictment upon which he was about to be tried was the question. Other proposed legislation directed specifically against him was being agitated and was pending; his daily mail was being consistently opened before delivery, he was continually shadowed upon the streets, about his residence, clubs and places of business, by men whom he did not know; government agents had made numerous examinations of his books, records, documents, bank accounts, interrogated his employees and pried into his private and business life; a portion of the public press was publishing in advance of the trial perverted news articles to bias the public mind and prejudice the local public against him. The day of trial arrived, the jury were qualified and having been sworn were permitted to separate and go at large.

On that day, upon returning to his hotel from the Court room, Mr. Sinclair expressed to his confidential friend and associate, Mr. Day, his disappointment that the jury had been permitted to go at large, as well as his trepidation and apprehension lest some of his enemies, competitors or those who had assailed him with malicious and malignant letters, might endeavor in some way to corruptly influence the jury against him.

William J. Burns, an investigator of international fame and scintillating reputation, with an office in New York, had until quite recently been chief of the Bureau of Investigation of the Department of Justice of the United States; it was a matter of public and general

knowledge that for many years, prior to and during Burns' incumbency, the Government of the United States had through its Department of Justice Bureau of Investigation "shadowed" (as it is termed) through its operatives, individual members of and entire panels of petit juries engaged in criminal trials during the adjournments of the Court throughout the trial. It was a matter of common knowledge in the city of New York (the city of Mr. Day's residence and Burns' office) and was personally known to Mr. Day, that the common practice and custom of the United States was to "shadow" the jury panel as well as individual members of trial juries sitting in the United States Court in the City of New York in criminal trials. Mr. Jeffries was Mr. Sinclair's personal Secretary in charge of Mr. Sinclair's office in New York during his absence from that city (R. 823). Mr. Sinclair having expressed to Mr. Day at the Mayflower Hotel upon his return from Court the first day of the trial, his perturbation and apprehension over the fact that the jury had not been locked up, directed Mr. Day (R. 823) to tell one of the secretaries who was in Washington to call Mr. Jeffries in New York and ask him to have one of the Burns communicate with Mr. Day in Washington, stating to Mr. Day that he wanted operatives with a lieutenant and a captain sent to Washington for the purpose of observing the members of the trial jury during the adjournment of Court to ascertain whether efforts to corrupt any of them were being made; his instructions were specific that no juror should be approached, nor spoken to, nor should any of the operatives in any way come in contact with any juror. They were to do no more than observe, and to report any suspicious conduct of jurors with third parties. Mr.

Day told one of the secretaries to call Jeffries and have him ask one of the Burns' to call him (Day) by 'phone at an address and telephone number in Washington which Mr. Day designated. Mr. Burns subsequently called Day, who requested him to send to Washington ten or twelve of his most responsible men with a lieutenant and a captain i ncharge, "to see, if it were humanly possible, that Mr. Sinclair received a square deal in the case." He said that he wanted the members of the jury shadowed, but under no circumstances was anyone to come in contact with any juror (R. 824). After talking with Mr. Day, Mr. Burns called his New York manager, Mr. Scanlon, into conference (R. 776), talked over with him the selection of the personnel to be used, told him that it was a surveillance or shadow job, that he wanted shadow men; that whatever men he (Burns) saw personally he would instruct not to come in contact with any of the jurors, that if a juror became aware that he was being shadowed and approached any of the men, for the man to walk away and drop the juror; Mr. Burns further told Scanlon that if he (Burns) did not see all of the men, that Scanlon should give them those instructions himself. Burns then considered whom he would put in charge and selected Mr. Ruddy, Manager of the Philadelphia office, because of his ability and good judgment. Burns by 'phone told Ruddy the nature of the employment, directed him to go to Washington, to communicate with Mr. Day, and that after he had talked to Day, to report back to him (Burns) in order to be sure that he (Burns) was correct in his assumption as to what the work was to be and its limitations. He directed Ruddy to call him on the long distance telephone after he had talked with Day. His purpose was (R. 777) to check what Ruddy

got from Day and determine whether or not the business was within the scope of legality and propriety.

Ruddy called upon Mr. Day in Washington, and having identified himself as from Burns' Agency, was handed by Mr. Day a list of the jurors which list had been prepared by counsel to assist them in the examination of jurors upon the voir dire. (R. 79, 826, 838, 840.)

Day told Ruddy to place the jurors under surveillance, that under no circumstances was any juror to be apprehended, but he wanted to be informed whether the operatives found that the jurors were approached by any one else, and to take the numbers of any automobiles that the jurors might get into with anybody; "he emphasized that the men were to be careful and instructed that they were not to approach the jurors at any time or in any way." (R. 83.)

After talking with Day, Ruddy reported the conversation to Mr. Burns by telephone as he had been instructed to do, confirming the correctness of Burns' interpretation of the employment, and its limitations. Burns told him to see that the men were very careful, and instructed that they were not to approach or communicate with any juror, or permit any juror to know he was being observed, and if any man disobeyed his instructions, he was to be immediately sent home; that he (Burns) had already so instructed the men sent from New York. (R. 84.)

Ruddy so instructed each of the operatives upon their arrival in Washington, and told them further, that they should not speak to any of the jurors, and that if they did they would be dismissed from the service of the agency. (R. 379.)

Ruddy designated to the operatives which of the

jurors they were to observe, directed them to report daily to him in writing, and this was done; Ruddy edited the reports, and from time to time himself reported to Mr. Day, who in turn advised Sinclair of some few matters which seemed important. (R. 85, 399, 827.)

Ruddy first talked with Day upon October 18, the first operatives arrived in Washington on October 19, the first active surveillance of jurors was upon October 20th.

The entire panel was never under observation, for lack of operatives. In all, fifteen Burns' men, including Ruddy and his amanuenses, came to Washington and were at work for three days, until Monday, October 24th. By this time the unfeasibility of the undertaking, as well as the large attendant expense had become apparent, and on that day, all but five operatives and Ruddy were discontinued and sent home. (R. 86.)

On Oct. 24, Day directed Ruddy to let the operatives go immediately, and keep only two or three, to work on certain suspicious episodes involving three of the jurors, and these continued the surveillance of certain jurors and other persons to and including October 30th. The government counsel and prosecutor knew the existence of and the details of the surveillance on October 24, knew that it was being continued and suffered the trial to proceed without making any report of it to the Court.

On October 29th, a newspaper reporter for the Washington Herald, named Donald King, deliberately sought out one of the jurors, Kidwell, in a "near-beer" saloon "for the purpose of getting a story for his paper," (R. 611), engaged him in conversation about the case on trial, plying him with drinks in order to

unloose his tongue about the trial: "I was giving him drinks so that he would talk, and would have time to talk" (R. 607), and this, after the editor of the newspaper and a local attorney had told King that it would be "all right for me to go and talk to this juror" (R. 599). King wrote up his conversation with the juror and it was published in his paper.

King was called before, and testified to the Grand Jury on October 31st, an affidavit was prepared by Assistant District Attorneys, sworn to by King on that day, and presented to the Court by government counsel on November 2, 1927, resulting in the discharge of the jury from further consideration of the case. Inexplicable as it may seem, yet no effort has ever been made to cite either the newspaper reporter King, the juror Kidwell, the editor or the lawyer for this conduct. But on November 22nd following, the District Attorney for the District of Columbia filed a petition against Sinclair, Burns and his son, W. Sherman, Day, Clark and Veitsch, charging them with contempt of Court in the mere observation of members of the jury for purposes entirely pure. In the interim, the Messrs. Burns and all of the operatives including Ruddy had been called before the Grand Jury and testified, voluntarily brought from New York and presented their records to the District Attorney, and unhesitatingly revealed the entire and complete truth of the affair to its utmost ramifications. The petition does not state that any operative approached or communicated with or attempted to approach or communicate with any juror; it does not state that any juror was conscious, or even suspected, that he was being observed; it does not aver that "the Administration of Justice was obstructed." The respondents all voluntarily appeared,

filed motions to dismiss the petition which were overruled, and answered admitting in detail the employment of the Burns' Agency for the purpose of observing jurors, admitting that the operatives did observe jurors, did report to Ruddy, that the reports were received from Ruddy by Mr. Day and that he in turn had made reports to Mr. Sinclair; the answers averred that the purpose which had actuated them was the legitimate and proper purpose of preventing the intrusion of unlawful and corrupt influences upon the jury, and denied that the purpose was to bribe, influence or interfere with jurors as averred in the petition.

The hearing of evidence began December 5, 1927, terminated February 21, 1928; the evidence developed nothing tending to support the petition which was not openly admitted in the answers of the several respondents. Sixteen witnesses testified that the operatives had been instructed not to approach, communicate with, or permit any juror to know that he was being observed and there was no evidence to the contrary; there was no evidence tending to show that any juror had been approached or communicated with by any operative, none that any operative had attempted or sought to approach or communicate with any juror, and none that any juror had known that he was being observed by any of the operatives. Neither was there any evidence which tended to show that the purpose of any of the respondents was other than that stated in their answers, to prevent if they could, the corruption of the trial jury. In spite of the absence of all such evidence, Messrs. Sinclair, Day and W. J. Burns were found guilty of contempt of Court and sentenced to imprisonment in the common jail; Sherman Burns

was found guilty and sentenced to pay a fine. The District Attorney claiming and the Court decided, that the mere observing of jurors, with good and lawful motives, with no purpose of making contact with any of them, with no contact made or attempted, and with no knowledge upon the part of any juror that he was being observed, constituted a contempt of Court.

POINTS.

The assignments of error as classified are directed against:

1. The overruling of the motion to dismiss the petition, and to dismiss at the conclusion of the Government's evidence.
2. The admission and exclusion of evidence.
3. Refusal to hear evidence in mitigation of sentence.
4. The judgment of conviction.

Error in overruling the motion to dismiss is assignment No. 1. Error in overruling the motion to dismiss after the evidence was in, is assignment No. 10. Error in the judgment of conviction is assignment No. 23.

While these three assignments present the same basic question, and upon this basic question can be discussed together, yet assignment No. 1, "Error in overruling the motion to dismiss the petition," presents an additional question which is exhibited as follows.

No matter what the evidence in a case is, it cannot enlarge the charge made in the accusation; the evidence admitted against an accused in a criminal trial may prove him guilty of larceny; yet he may not in that trial be adjudged guilty of larceny upon an accusation which does not charge him with it. The point

of the motion to dismiss the petition, is that the petition did not charge contempt of Court, in that it failed to set forth facts which showed that Day or anyone else had "obstructed the administration of justice;" it failed to so aver generally, failed to aver that any one ever approached or communicated with any juror; failed to aver that any one attempted to approach or attempted to communicate with any juror; failed to aver that any juror was conscious of being observed, so that it made no pretense of showing that the administration of justice had been obstructed.

The point of the botion to dismiss made at the conclusion of the government's case (R. 698) and renewed at the close of all evidence (R. 842) was the same; there was no evidence tending to prove that any operative approached or communicated with any juror; no evidence that any operative endeavored or attempted to approach or communicate with any juror; no evidence that any juror was conscious of being observed. It was, and is, claimed as the law of both logic, and of the land; that so long as Court and jury proceed toward the ascertainment and administration of justice, unaffected by, and unconscious of any extraneous influence, that such influences are non-existent as to them, have no effect, and the administration of justice has not been obstructed. Crimes may or may not be committed, round about them and on all sides; but so long as Court and jury are unaffected by, and unconscious of, them, they can exercise no influence upon Court or jury; so long as no influence has been exercised upon Court or jury, neither court nor jury, nor the administration of justice has been affected, and the administration of justice has not been obstructed.

The power by process of "Contempt" to remove obstruction from the path of justice, or to punish for the intrusion into that path of an obstacle which does ob-

struct, it well said to be necessary to the efficacy of Courts. Beyond this, there exists no need nor reason for the existence or exercise of such a tremendous and summary power. The functions of judicial tribunals neither need nor call for it; it is not required; there is no purpose which it can fulfill.

If the act of a citizen seems flagrant because it is a crime, then as a crime it must be punished, after indictment and jury trial; unless, of course, it has obstructed the administration of justice, as well as violated the penal laws. Let it be howsoever criminal you will; yet if it has not obstructed the administration of justice, it is not contempt of a judicial tribunal; and for one who happens to be a judge by his mere *ipse dixit* and only because, perchance, his sensibilities may be agitated, to deprive citizens of property, liberty and fame, is destructive of the institution of a free land, insufferable to its people, and can be neither justified, tolerated nor sustained.

Startling as it may seem, the District Attorney manifested no conception of the foregoing distinction; his position below was that a violation of Section 135 of the Penal Code was a contempt of Court; he said (R. 77):

> "Now, Section 135 of the Federal Penal Code provides, and so far as the petition filed by the United States is concerned, I shall read the provisions of that section in full, and then I will delete it to show the portions that I claim are violated or constitute a contempt of this Court such as is charged in the petition:
>
> . . . . . .

> "The petition sought to bring to the Court's attention the acts of these respondents as a contempt of Court, for doing acts that the Government considered was *a violation of the language of that section*, and hence a contempt of court."

It is not startling, that the District Attorney grounds his case upon a penal statute, and claims that for the violation of such a statute a citizen should be held in contempt of court?

For cases of felony, the Constitution provides that no person shall be held to answer for a capital or infamous crime unless upon presentment or indictment by a grand jury. If a misdemeanor, the same instruments warns that no person shall be deprived of life, liberty or property without due process of law. The Supreme Court has many times announced that due process of law requires a jury trial. The petition at Bar was conceived in the belief that to violate a penal statute as such, was contempt of Court. This proceeding has been carried on in that belief, which is enough to destroy it.

In the case of Coll, 8th Fed. (2nd) 20, was a similar enterprise; it was charged by the District Attorney that Dr. Coll was guilty of contempt of court in that he had undertaken to bribe a witness, elsewhere than near about the court house.

No bribe was given and the witness never testified falsely. He had been promised immunity on account of his testimony before the grand jury, but there had been no actual obstruction of justice by "persuading" or "securing" him to testify falsely.

The Circuit Court of Appeals said:

"The power of the Federal District Court to punish for contempt is limited by Act of March 2, 1831."

(Reading the first section of the Act.)

"Section 2 of the Act of 1831 is now Section 135 of the Penal Code, and is as follows.

(Reading the second section of the Act, upon which the District Attorney has grounded this proceeding.)

Then, says the Court:

"It is elementary that the legislative purpose must be inferred from the entire act. The two sections are to be read together. Section 2 covers misbehavior in obstructing the administration of justice not punishable as a contempt under Section 1. The United States Attorney for Porto Rico concedes that the alleged offenses of Dr. Coll might have grounded indictments and prosecution under Section 2; but his extraordinary contention is that it was necessary to proceed in such fashion as to deprive the alleged wrongdoer of a jury trial."

"In his brief it is stated:

'We are impelled to close this paragraph by saying that the public character, notoriety, and influence of those charged with contempt in this case was of such a nature that a reasonable man, knowing the situation as it then existed, would have great and serious doubt whether a jury could be found within the jurisdiction of the court below that would convict the defendants below, even for the grossest contempt.'

"This amounts to urging usurpation of jurisdiction, in order to achieve a conviction thought impossible under the forms of law provided by Congress."

The court then proceeds at very considerable length and closes thus:

> "We may observe, generally, that it is now settled by decisions of the highest court in the land, that the broad, almost unlimited, power to punish summarily for contempt, asserted by many courts, may constitutionally be, and has been, limited by legislative enactment. It is now beyond question that the Act of 1831 and Sections 21, 22, of the Clayton Act of October 15, 1914, are, in the federal courts, valid restrictions on powers which many courts have asserted as inherent in all real courts.
>
> Another recent and significant decision, showing the critical care with which the Supreme Court of the United States is now guarding this vitally necessary, but highly dangerous, power to punish for contempt, is Cooke v. the United States, 267 U. S., 517, decided April 13, 1925. All the implications of this latest decision of the Supreme Court concerning criminal contempt make for the construction that we give to the statute of 1831."

That construction was just as is claimed here, that there must have been an obstruction to the administration of justice, otherwise the attempt, if any, must be prosecuted by indictment and a trial by jury accorded.

The foregoing portrayal of the cause and its conduct below is sufficient background for the

ARGUMENT.

The "inherent power" of Federal Courts to punish for "contempt" has been purposely, definitely and distinctly limited by Act of Congress. The history and cause of that legislation is interesting and illuminating.

When the original Judiciary Act of 1789 was adopted the phrascology of the statute upon the subject of contempts was thus—(Section 17 of the Judiciary Act of 1789):

> "That the judges of the said courts of the United States shall have power to administer all necessary oaths and affirmations, and to punish by fine and imprisonment, at the discretion of said courts, all contempts of authority in any case on hearing before the same."

Such was the statute. And such it continued to be up until 1830, when Judge Peck, the District Judge of the District of Missouri, was impeached. The facts upon which the impeachment was grounded were;—Mr. Lawless, a member of the St. Louis bar, was engaged as counsel in the trial of an important land cause before Judge Peck. The judge announced his decision orally from the bench. It was adverse to Mr. Lawless. A day or two later there appeared in a newspaper what purported to be a written opinion of the judge, and indeed it turned out to be such. He had, at request, formulated his opinion into writing after delivering it orally from the bench, of which Mr. Lawless was ignorant. Lawless wrote and there was published in the same paper an article signed "Citizen," which undertook to point out what were claimed to be various errors in the published opinion of the court, and to criticise them as such. Upon the convening of court, the judge upon the bench read from the newspaper and inquired of the Bar who were assembled if any knew the name of the editor. Mr. Lawless responded that he did, and gave the name. Thereupon, the editor was cited for contempt of court, and was defended as best

he could by Mr. Lawless, who counselled the editor not to divulge the name of the author of the article because he, Mr. Lawless, desired to stand upon the legal question of the right of a citizen to criticise, if he saw fit, the opinion of a court after the trial was ended.

It becoming manifest that the judge was about to commit the editor for contempt of court, Mr. Lawless then advised him to disclose himself, Mr. Lawless, as the author of the article, which the editor did. The name of Mr. Lawless was forthwith substituted for that of the editor, and he was sentenced to 24 hours in jail and to be suspended from the practice of law for 18 months. He was sent to jail and released upon a writ of habeas corpus. But the limitation of time upon his activities at the bar was carried into execution against him.

Judge Peck was impeached and tried before the Senate of the United States. Mr. McDuffie, Mr. Buchanan and Judge Spencer of New York were active upon the part of the Managers. They having the statute in mind, contended, as we contend at Bar, that there was no power in the court to punish for contempt unless the act complained of, "obstructed the administration of justice." Mr. Meredith for the defense contended that the judge had power by the processes of contempt to protect himself against libelous criticism. Mr. Wirt, for the defense, was shrewder than that. He made the same contention, but went further. He said:

> "Be it even so that the judge had no power to punish this for contempt, yet he believed he had the power, and an impeachment for error in judgment is not consistent with the theory or the practice of English government. God forbid that a magistrate should suffer from an error of judg-

ment if his purpose was honestly to discharge his trust." (Trial of Judge Peck.)

The trial began in the Senate on the 20th of December, 1830. On the 31st day of January, 1831, it ended, and the vote of the Senate was taken, 21 for guilty and 22 for not guilty. Thirty days later the Act of March 2nd, 1831, was passed as exhibiting the determination of Congress to be that no judge without a jury trial should deprive a citizen of life, liberty or property unless for "obstructing the administration of justice."

The Act of 1789 used the word "judges;" that "judges" of the courts of the United States shall have power to administer all necessary oaths, etc. The Act of 1831 eliminated that word "judges", because in the debate before the Senate it was that word upon which Mr. Meredith relied to convince the Senate that the power of the court extended to the vindication of an individual judge from personal or official criticism. And that word "judges" was wiped out of the statute by the Act of 1831, which provided: "That the power of the several courts of the United States"—not judges—"to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any case except the misbehavior of any person or persons in the presence of said courts or so near thereto as to obstruct the administration of justice."

Ex Parte Robinson case, 86th U. S. 510, was perhaps the first case in which the subject of the limitation of power by the Act of 1831 was directly dealt with by the Supreme Court. It announced:

"The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2nd, 1831. The act, in terms, applies to all courts, whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the Circuit and District Courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction."

"The act of 1831 is, therefore, to them, the law specifying the cases in which summary punishments for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: 1. Where there has been misbehaviour of a person in the presence of the court, or so near thereto as to obstruct the administration of justice; 2. Where there has been misbehavior of any officer of the courts in his official transactions; and, 3. Where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts."

The Act of 1831 contained two parts: Section number one, and section number 2. They are as follows: 4th Session laws, page 487.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the power of the several courts of the United States to issue attachments and to inflict summary punishments for contempt of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts."

Sec. 2. *And be it further enacted*, That if any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any Court of the United States, in the discharge of his duty; or shall, corruptly, or by threats or favor, obstruct, impede, or endeavor to obstruct or impede, the due administration of justice therein, any person or persons so offending, shall be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished, by fine not exceeding five hundred dollars, or by imprisonment, not exceeding three months, or both, according to the nature and aggravation of the offense.

Approved March 2, 1831."

4 Stat. 487-488.

Section 1 of the original act is now sec. 385 Judicial Code; Section 2 of the original act, is sec. 135 of the Criminal Code.

The second section of the Act is very significant as indicating the legislative intent as to what the appropriate construction for the first section of the Act, should be; the second section makes it a criminal of-

fense to do, as manifestly Congress thought, that which was not contemplated by the first section of the Act as constituted contempt of court, because the first section provides, "Shall not extend to any case except the misbehavior of any person or persons in the presence of said courts, or so near thereto *as to obstruct* the administration of justice.

That either means what it said, or it means something else. If it means what it says, Congress intended that deportment or misbehavior outside of the presence of the Court must obstruct the administration of justice before it could be proceeded against as contempt. And Congress proceeded to emphasize that view by the enactment of the second section of the Act, which is as follows:

> "And be it further enacted, that if any person or persons shall, corruptly, or by threats or force, *endeavor* to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty or shall, corruptly, or by threats or force, obstruct, or impede, or *endeavor* to obstruct or impede, the due administration of justice therein, every person or persons, so offending, shall be liable to prosecution therefor, by indictment," and so forth.

If the Act be examined in the raiment which it wore when adopted by the Congress of the United States, it is not manifest that, actuated as it shows Congress was, by complaint already arising among the people as to the usurpation of power by the Federal Judiciary, that this Act was intended to limit the power to punish for contempt, and, therefore, to limit the actual commission of contempt to the doing of things which "obstructed" the administration of justice? The Act said,

"obstruct the administration of justice"; and that if conduct came short of "obstructing of justice", it might be punished as a crime; if it were an attempt which did not succeed, which did not reach the mark, it was a thing which should be punishable by criminal procedure, in which the defendant had the right to trial by jury; so that no charge should or could be made against the Federal Judiciary of attempting to usurp power which, under the Federal Constitution, was vested in a jury of the people.

"Where there has been misbehavior of a person in the presence of the Courts, or so near thereto as to obstruct the administration of justice."

What does that mean? Does it mean that if there be misbehavior in the presence of the Court it may be dealt with as for contempt, although it does *not* obstruct the administration of justice? That only misbehavior *beyond* the presence of the Court need obstruct justice to amount to contempt? It may mean that, or it may mean that misbehavior of a person or persons in the presence of the Court, as well as out of the presence of the Court, must obstruct the administration of justice in order to amount to contempt. This question the Supreme Court has settled in the Hudgins case (249 U. S., 378) by there deciding that the "misbehavior" of committing perjury in the presence of the Court was not contempt, unless it "obstructed the administration of Justice."

The Savin case (131 U. S. 267), was one wherein an effort was made by the respondent in the jury room, seven feet from the court room, and in the hallway upon which the door opened, to bribe a witness to testify falsely in the pending trial. He was adjudged guilty of contempt, and the matter came to the

Supreme Court of the United States on habeas corpus. This case exhibits, as many others do, the thoughtful care of the Supreme Court; its foresight in undertaking to go no farther than the exigencies of the case require in the interpretation of legislation, leaving open, for future determination by the court, according to the illumination of its surrounding circumstances, the questions which can arise, but have not yet come to the bar.

Justice Harlan said (131 U. S. 267):

> "The power of the courts of the United States to punish contempts of their authority is not merely incidental to their general power to exercise judicial functions, but, as was said ex parte Terry, 128 U. S. 289, 304, where this subject was considered, is expressly recognized and the cases in which it may be exercised are defined, by Acts of Congress. The Judiciary Act of September 24, 1789, invests them with 'power to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same'.
>
> "By an Act of Congress, of March 2, 1831, Declaratory of the Law Concerning Contempts of Court," it was enacted:—

and the statutes are then quoted by the Justice; after which he proceeds:—

> "The second section of the Act of 1831 is in part reproduced in section 5399 of the Revised Statutes, title 'CRIMES.' That sections is as follows:"

He read the second section of the Act, and continued:—

"It is contended that the substance of the charge against the appellant here, that he endeavored, by forbidden means, to influence or 'impede' a witness in the District Court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice, which offense is embraced by Section 5399, and, it is argued, is punishable only by indictment. Undoubtedly, the offense charged is embraced by that Section, and is punishable by indictment. But the statute does not make that mode exclusive, if the offense be committed under such circumstances as to bring it within the power of the Court under Section 725."

"The Act of 1789 did not define what were contempts of the authority of the Courts of the United States, in any case or hearing before them, nor did it prescribe any special procedure for determining a matter of contempt. Under that statute the question whether particular acts constituted a contempt, as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation. The Act of 1831, however, materially modified that of 1789, in that it restricted the power of the courts to inflict summary punishments for contempt to certain specified cases, among which was misbehavior in the presence of the court, or misbehavior so near thereto as to obstruct the administration of justice."

"The question then arises, whether the facts recited in the final order of the District Court as constituting the contempt—which facts must be taken in this collateral proceeding to be true—'make a case of misbehavior in the presence of the Court, or the misbehavior so near thereto as to obstruct the administration of justice therein.' There may be misbehavior in the presence of a court amounting to contempt, that would not, ordinarily, be said to obstruct the administration of

justice. So there may be misbehavior, not in the immediate presence of the Court, but outside of and in the vicinity of the building in which the court is held, which, on account of its disorderly character, would actually interrupt the court, being in session, in the conduct of its business, and consequently obstruct the administration of justice."

Follows a discussion, wherein the Court dealt with the argument that had been made, that the difference between the Savin case, the case under consideration, and the Terry case—The Terry case was where a man assaulted the marshall in the court room in the presence of the judge,—that the difference between the Savin case and the Terry case was that in Terry's case the act was committed in the presence of the judge, and that, in the Savin case, the act was not committed in the Court's presence. Justice Harlan continued:

"We are of opinion that the conduct of the appellant, as described in the final order of the District Court, was misbehavior in its presence, for which he was subject to be punished without indictment, by fine or imprisonment, at its discretion, as provided in Section 725 of the Revised Statutes."

He had already said, speaking to that point:

"But if such attempt and offer occurred in the hallway just outside of the court room, or in the witness room, where Flores was waiting, in obedience to the subpoena served upon him, or pursuant to the order of the court, to be called into the court room as a witness, must it be said that such

misbehavior was not in the presence of the Court? Clearly not."

The point of the Savin case was to show the recognition by the Supreme Court of the limitation of power which the statute put upon Federal courts; and, also, to establish that the environs of the court, the places and rooms used by the court in the transaction of its business, were in the court's presence. Whether the conduct complained of "obstructed justice," was taken for granted; was not debated; it was conceded.

In the Cornish case, in 299 Federal, page 293, a decision by the Circuit Court of Appeals, the syllabus is:

> "Under Judicial Code, Section 268, (comp. st., 1245), contempt not committed in the physical presence of court, or constituting disobedience to an order, must have been so near to the presence of the court as to have obstructed the administration of justice."

The opinion is very short. The Court said:

> "Where there is a prosecution as for contempt, Under Section 268, Judicial Code, and where it is not claimed that the alleged misbehavior was committed in the physical presence of the Court, or constituted disobedience shall have been 'so near thereto as to obstruct the administration of justice.' When the conduct complained of is a newspaper publication, defamatory of the trial judge, it is also necessary that the publication relate to a matter pending, and not to one that is past."

And why? It is in that field of proceedings against newspapers for contempt that most of the judicial ex-

pression upon this particular subject has been had, and in which cases it is universally ruled that unless the case, concerning which the publication speaks, is still pending, still going forward, so that the article may affect the future action of the court or jury, there is no obstruction of justice and no contempt. The opinion recites:

> "The publication here involved is not obviously and certainly within the forbidden field in either of these particulars. We do not say that it may not be within that field in both particulars; but in such a situation the pleading, whether petition or information or journal entry, by which the prosecution is initiated, should state completely the necessary facts, and not stop with conclusions. Under this test, we think the petition herein insufficient. It does not state the facts from which it draws the inference that the publication would obstruct the administration of justice, nor does it make clear that the publication, in its effect, went beyond reference to a judicial order already made."

And so for this petition and evidence at Bar. It is not even contended that this petition avers that any juror was ever approached, that any juror was ever communicated with, that any juror was even conscious that he was being observed. There can be no reason given to characterize as illegal or unlawful any single act of the respondent, Day, as charged in this petition against him, or as shown in evidence.

How can anything influence one, which does not approach within the field and purview of any of his senses? How could a juror have been in any way affected by any deportment of others, no matter how far reaching it otherwise might be, providing it never

came within the field of his consciousness and never was exhibited to any of his senses? How can it be that there is that which even tends to interfere with the function of a juror, so long as there is nothing within the field of that juror's senses or of his consciousness that acquaints him with any such effort or purpose, and especially when no such purpose anywhere existed?

Unfortunate it is, that the phrase "contempt of court" ever got to be the terminology for characterizing the offense against the functions of Courts which can be met in a summary way; because that phraseology is so indefinite as itself to have occasioned many unfortunate instances in which judges, on account of insolence towards them personally while not in the discharge of their functions, have felt, and felt honestly, that they possessed the power and were required to exercise it in a summary way, which Appellate Courts have consistently condemned. If the phrase "Contempt of Court" could be wiped out of the books and "obstructing the administration of justice" substituted in its stead, the field would be very clear. Where else, except in that field, is there room for such a summary power for courts? Why should it exist unless there has occurred that which has obstructed, the administration of justice? The violation of a court order obstructs the administration of justice because it stops the flow of the judicial power in the direction and to the end that the court has released it. The failure of an officer of the court to do his duty obstructs or impedes or interferes with the administration of justice. What necessity is there for the exercise of summary power in any other field? There is none, and neither the people nor Congress would tolerate or submit to it, and it was never the law.

A very striking case, is Doniphan versus Lehman, 179 Federal 173. The syllabus states:

> "Neither the taking of a deposition to be used in a Federal Court in another State, in pursuance of a conspiracy to impose upon the Court, nor the filing and publication of such deposition, is a misbehavior in the presence of the Court, or so near thereto as to obstruct the administration of justice, punishable as a contempt under Revised Statute, Section 725; but to constitute such contempt the deposition must have been used or offered in evidence."

The Court said:

> "The affidavits show that the conspiracy alleged was entered into between Doniphan and Lehman in the States of Kentucky and New York, and the overt acts in furtherance of the conspiracy were committed in those states. The acts committed in Kentucky consisted in the sale and delivery of property and the payment of money, and it is not claimed that those acts, however reprehensible, constitute any contempt of court. The only acts in New York in furtherance of the conspiracy consist in the taking of a deposition by the complainant, Doniphan, before an officer selected by agreement of the parties and sending the same by mail to the Clerk of the Court in Indianapolis, Indiana, who received and filed the same to be used on the trial of the suit. Since the deposition has been filed, it has been published; but at whose instance it is not shown. Do these acts constitute a contempt of this Court?"
>
> "This statute embraces three classes of cases in which the Court is given jurisdiction to punish contempt: (1) Misbehavior of any person in the presence of the Court or so near thereto as to obstruct the administration of justice; (2) misbe-

havior of the officers of the Court in their official transactions; (3) Disobedience or resistance by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the Court. The facts set out clearly do not present a case for contempt under the second and third clauses of the above section. If a contempt is disclosed it is under the first clause, making misbehavior in the presence of the Court, or so near thereto as to obstruct the administration of justice a contempt. A conspiracy to misbehave in or near the presence of the Court for the purpose of obstructing the administration of justice does not of itself constitute a punishable contempt."

Just as at bar, even if it were alleged that there was a conspiracy between Sinclair, Day and the Burns Agency, to obstruct the administration of justice, that is no contempt of Court; if there was such, it may be punished by indictment under the second section of the Act of 1831. The mere forming of the conspiracy is not a contempt of Court. The Court proceeds:

"It is the act of misbehavior in or near the presence of the Court, and not the conspiracy, which constitutes a contempt. If the complainant, Doniphan, and the defendant, Lehman, formed the alleged conspiracy they committed no contempt in so doing. And if they have committed overt acts in furtherance of the conspiracy, they have not made themselves amenable to punishment for contempt unless their acts constitute misbehavior in or so near the presence of the Court as to obstruct the administration of justice."

"The taking of a deposition in New York for the purpose of furthering the conspiracy can not be held to be misbehavior in or so near the

presence of the Court as to obstruct the administration of justice."

U. S. vs. Carroll, 147 F. is interesting: it deals with the very subject of an effort to bribe a juryman. Says the syllabus:

> "A bare attempt, without success, to induce a third person to do what he could to influence jurors in a pending case in a federal court, did not obstruct the administration of justice, so as to constitute a contempt, * * * the act done by the accused must naturally and directly tend to such obstruction."

The material averments of the affidavit of the Assistant United States Attorney in Carroll's case set out that on—

> "the 11th day of August, A. D. 1906, at the City of Helena, in said district of Montana, corruptly endeavored to impede the due administration of justice in the case of the United States v. Joseph T. Carroll, now pending in the District Court of the United States, in and for the district of Montana, in the following manner, to wit: That the said William Carroll on the 11th day of August, A. D. 1906, approached one George B. Hopkins, a resident and citizen of the city of Helena, state and district of Montana, and handed the said George B. Hopkins, a paper containing a list of the names of the jurors impaneled to try said cause, and asked the said Hopkins if he was acquainted with A. Wiegand, one of the members of said jury, and that if he had any other friends on said jury to use his influence with them for the benefit of said defendant, or words to that effect; and also stated to said Hopkins that he had other lists that he was handing around."

Said the Court:

> "It is, however, a principle very well settled that accusations for contempt, especially where of criminal import, must be supported by evidence sufficient to convince the mind of the trier, beyond a reasonable doubt, of the actual guilt of the accused, and every element of the offense, including the criminal intent, must be proved by evidence or circumstances warranting an inference of the necessary facts." • • •
>
> "Now the question resolves itself into whether this demeanor on the part of Carroll tended in any manner to obstruct the administration of justice. I have been referred to but one case having a direct bearing upon the condition involved. This I will allude to later. In treating of section 5399 a cognate statute to section 725, the court in United States v. Bittinger, 24 Fed. Cas. 1149, No. 14,598, in its instructions to the jury, says of the first clause: 'It contemplates a case in which an attempt is made to directly interfere with a witness, and to improperly and illegally influence him.' And of the second clause: 'It will be necessary for you to find that the defendant, Bittinger, did some act or acts which obstructed or impeded the due administration of justice.' Thus giving the impression that the act complained of must have the direct effect, within itself to obstruct or impede the administration of justice.
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> "In a much later case, United States v. Seeley, 27 Fed. Cas. 1010, No. 16,248a, the court discusses directly the import of the words 'obstruct' and 'impede,' as employed in the same section 5399. It says:
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> > 'To "obstruct," independent of the acceptation the word has obtained in the criminal law, would seem to stand *ex vi termini* a direct

and positive interposition, which prevented, or tended to prevent, the action of the officer or court in respect to a matter then to be proceeded in. "Impede" must necessarily bear a similar import, and, if there be any discrimination between the two terms, it can only be that the same direct and positive interference may, without amounting to a complete obstruction, become an impediment to the action intended to be intercepted. The intention of the Legislature to give these terms an application only to direct acts of violencee or menace is inferrible from the construction that the endeavor is made equally criminal with the entire completion of the purpose. An endeavor to obstruct or impede, etc., by threats or force, would necessarily imply the efforts to put forth some act, which in its natural, if not necessary, consequence, must be attended with an obstruction, and with a forced and compelled interruption of further progress in the administration of justice.'

"Thus again indicating that the act put forth must itself have the direct and natural effect to obstruct or impede. If this be so, then the act of Carroll in endeavoring to get Hopkins to do something for him, or his brother, with the jury, which Hopkins never consented to, could, of itself, have no direct or sensible effect to obstruct or impede the due administration of justice. It was an endeavor which in no way reached or influenced the jury, and, therefore, tended in no way to impede justice or the administration thereof. If the endeavor had been directly with the jury or a member thereof, then it would have reached the mark; but an effort to get a third person to act, who declined, stops short of a misbehavior that is effective to obstruct, or impede justice, or to hinder its administration."

The Supreme Court has definitely ruled upon the very question in the case of Hudgings, the 249 U. S. on page 378. In that case the opinion was delivered by Chief Justice White, the facts were as follows: There was, a witness on the witness stand in a trial which was proceeding. The judge becoming of opinion that the witness was committing perjury, instantly ordered him attached and dealt with as for contempt of court. He said:

> "This witness is going to be committed for contempt of court. The court is thoroughly satisfied, Mr. Witness, that you are testifying falsely when you say that you cannot recall of ever seeing Mr. MacMillan write, and this has happened several times during this trial with other witnesses, especially with your wife. * * *
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> "And it becomes the plain duty of the court to commit you to jail, sir, for contempt, and before doing so, I think it is the duty of the Court to explain to you that the answer, 'I do not remember of ever having seen him write,' is just as false, is just as much contempt of court if you have seen him write, as it would be for you to say that you pression, 'I do not remember.' "

The principal quality of the Hudgings case is in the determination of that much debated question whether and when a court has power to punish perjury as for a contempt of court; the judge of the trial court committed Hudgings to jail, because he was satisfied from what occurred in his presence that this witness on the witness stand before him was guilty of perjury; but nevertheless on habeas corpus the Supreme Court held that the judge had exceeded his power, *because there was nothing to show that the perjury had had the ef-*

fect of obstructing the administration of justice. The Chief Justice said:

> "That the contumacious refusal of a witness to testify may so directly obstruct a court in the performance of its duty as to justify punishment for contempt is so well settled as to need only statement. Despite some confusion caused by certain ambiguous forms of expression used by the Court below in dealing with the subject, it is indisputable that the punishment for contempt was imposed solely because of the opinion of the court that the witness was wilfully refusing to testify truthfully, that is, was committing perjury."

Many of the Bar have thought that the commission of perjury alone, no matter if it had no effect on the outcome of the case, was contempt of court until corrected by this opinion of the Supreme Court of the United States.

> "Whether, then power to punish for contempt exists in every case where a court is of the opinion that a witness is committing perjury, is the test we must here apply. Because perjury is a crime defined by law and one committing it may be tried and punished does not necessarily establish that when committed in the presence of a court it may not, when exceptional conditions so justify, be the subject-matter of a punishment for contempt. For an application of this doctrine to perjury" (see a number of authorities). "This being true we must ascertain what is the essential ingredient in addition to the elements constituting perjury under the general law which must be found in perjury when committed in the presence of a court to bring about the exceptional conditions justifying punishment under both
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> "Existing within the limits of and sanctioned

by the Constitution, the power to punish for contempt committed in the presence of the Court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end, that means appropriate for the preservation and enforcement of the Constitution may be secured.

"*An obstruction to the performance of judicial duty* resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, *it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted*—a principle which, applied to the subject in hand, exacts that in order to punish perjury in the presence of the court as a contempt there must be added to the essential elements of perjury under the general law *the further element of obstruction to the court in the performance of its duty*. As illustrative of this, see United States v. Appel, 211 Fed. Rep. 495. It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. But the mistake is, we think, evidence, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing. If the conception were true, it would follow that when a court entertained the opinion that a witness was testifying untruthfully the power would result to impose a punishment for contempt with the object or purpose of exacting from the witness a character of testi-

> mony which the court would deem to be truthful; and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled."

And so it was concluded that even when the misbehavior was in the presence of the court that there must be charged and must be proven that that misbehavior was "an obstruction to the performance of a judicial duty" or no contempt of court was shown or proven.

In the trial below it was neither claimed by the District Attorney nor considered by the Court that there existed any evidence which tended to prove that any juror was approached or communicated with, or that anyone had any purpose of approaching or communicating with any juror, or that anyone attempted or endeavored to approach or communicate with any juror, or that any juror ever suspected that he was being observed by the Burns operatives. The entire undertaking produced no effect upon the mind of any juror, no knowledge of any part of the undertaking was ever intruded into the mind of any juror, the entire tribunal, court and jury, were utterly ignorant and unconscious of any part of the undertaking, so that there could be no pretense even, of an obstruction to the administration of justice. For the foregoing reasons, there was error in overruling the motion to dismiss the petition, error in overruling the motion to discharge the rule at the close of the Government's evidence, and error in overruling the like motion at the conclusion of all the evidence.

ERROR IN THE EXCLUSION OF EVIDENCE.

Sixteen witnesses subpoenaed from throughout the United States, were actually produced in court and placed upon the witness stand, amongst them two former Chiefs of the Bureau of Investigation of the Department of Justice whose immediate superior was the Attorney General of the United States himself. (R. 788-789.) All of these witnesses either were at the time or had been in the employ of the Bureau of Investigation of the Department of Justice. They were offered to prove that for a time so long as that the memory of man runneth not to the contrary, it had been the continuous and unbroken custom of the United States, the United States District Attorneys throughout the United States, the Bureau of Investigation of the Department of Justice of the United States, and the Attorney General of the United States through the Bureau of Investigation, in the trial of criminal cases in the Federal Courts, to keep under surveillance individual members of trial juries, entire jury panels sitting in criminal causes, and keep them under constant surveillance during all of the time they were not in actual attendance upon the Court, to observe them as closely as possible when they were abroad from the Court room from their places of business and from their residences and watch their residences after they had gotten home at night, and that this was done when there was no reason to suspect at the time of the surveillance, any lack of integrity upon the part of any juror or to suspect that any person was endeavoring to improperly approach them.

That the Attorneys General of the United States throughout that time knew and approved of the cus-

tom, themselves received reports in person, and themselves at times directed such surveillance to be had (R. 718-715-ETSEQ): further, that the same practice had prevailed in the District of Columbia, and that at the direction of the very District Attorney, who was engaged in the prosecution at Bar, Major Gordon, not only was an entire jury panel kept under surveillance by the Department of Justice during the trial, but also that that surveillance was extended to every witness and every lawyer for the defense. And further offered to prove (R. 722) that the Department of Justice had shadowed and kept under surveillance Federal Judges at the direction of the Attorney General of the United States himself; that at the direction of the Attorney General himself, a Justice of the Supreme Court of the District of Columbia was kept under surveillance for a period of four months (R. 726). All of this evidence was excluded. It was re-offered after the decision of the Court and in mitigation of sentence, and again excluded (R. 855). The offer of this evidence was upon two theories: First, That an unbroken custom, of interpretation by the Attorneys General and the Department of Justice of the Statutes which clothe that Department with its power establish by this unbroken custom a "law of usage" as it were; established for the United States a "common law" for the United States upon this point; a law which made the surveillance of juries lawful, if it was not already lawful independent of the custom. The second reason was, that the evidence should be heard in mitigation of sentence. These reasons in their order. First, the Government of the United States is unique in that it is not a "sovereignty of the soil," and as a sovereignty has no laws which adhere in and to

the soil. It had at its inception no "common law," no law save the Constitution and Acts of Congress made in pursuance thereof and it has no "common law" of its own yet, and never can have, unless such a common law is established by the "usage and custom" of its several Departments of Government. Is it possible that since the existence of the Federal Government no "law of usage" no "common law" for it has been established by the practices and customs of its several Departments? Their powers exist only by virtue of Statutes, and can it be that in matters of detail in the execution of powers specifically granted, the various departments throughout their existence have not by their "custom" established as law for certain details implied powers not expressed by any Statutes?

> "The United States as a Federal Government, have no common law; and consequently, no indictment can be maintained in their courts, for offenses merely at the common law." (U. S. v. Worrall, 2nd Dall. 394.)
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> "To attempt to regulate by law the minute movements of every part of the complicated machinery of government, would evince a most unpardonable ignorance of the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor defined, and which are essential to the proper action of the government. Hence, of necessity, usages have been established in every part of the government which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits; and no change of such usages

have a retrospective effect, but must be limited to the future." U. S. v. Macdaniel, 7th Peters, 1.

By this process the Department of Justice has established "by common custom and usage of the United States itself" the legality of the surveillance of juries.

In U. S. v. Birdsall, 233rd U. S. 223, the Supreme Court of the United States in considering how "a common law" might be established for a department of the government said, (231) "Nor was it necessary that the requirement should be prescribed by a written rule or regulation. It might also be found in an established usage which constituted the common law of the Department and affixed the duties of those engaged in its activities."

It is to be remembered, that the construction which the Department of Justice has from time immemorial given to the Statutes which grant power to that department, has been that the surveillance of juries was legal and proper and sanctioned by the statutes conferring power on that department. The lawfulness and legality of surveillance for proper and pure motives,—surveillance alone,—has never been questioned until the filing of the petition at Bar, a petition which the District Attorney as above pointed out, grounded upon his belief that the violation of a penal statute alone was contempt of court. Upon the point of the effect of Departmental custom in the interpretation of statutory powers, the Supreme Court of the United States in St. Paul R. R. v. Phelps, 137 U. S. 36, said:

"Had any such case been presented when the language of the statutes under consideration was

> dubious and open to different interpretations, the established construction of them by the department charged with their execution would have very great force and generally a controlling one in the formation of the judgment of this court."

Why should not the custom and usage of the United States itself "from time whereof the memory of man runneth not to the contrary" establish a common law? The entire field and scope of chancery and equity jurisdiction was established by no other power save the custom and usage of officers of the King, without a word of parliamentary or statutory legislation upon the subject. The "common law" itself is characterized by the very quality that it exists independent of statutory legislation, established only by "custom and usage."

For the foregoing reasons, the court below seems to have erred in the exclusion of the evidence which was offered.

THE EVIDENCE SHOULD HAVE BEEN RECEIVED IN MITIGATION.

As above indicated the same evidence was re-offered in mitigation of sentence (R. 855). There may have been a time in the history of the law when the right to offer evidence in mitigation of sentence for contempt of court was debatable; that time has passed; for since and by the decision of the Supreme Court of the United States in Cooke v. United States, 267 U. S. 517, that question is laid at rest. The Court said, (537)

> "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised

of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, *and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed.*"

Elaboration of argument is therefore superfluous. The decisions of the Supreme Court need no other reasoning than its own to sustain them.

OTHER EVIDENCE EXCLUDED

Other rulings excluding evidence offered by the respondent Day, will now be noticed. The evidence was offered on two theories, first, to show good reasons in the mind of Day to be apprehensive that effort would be made to corrupt the Sinclair jury, as bearing upon the purity of his motives in taking part in the surveillance. Second, as showing the existence as matter of fact, of a reason which justified the surveillance. Mr. Day had testified (R. 818) that he had spent a number of years in Russia, and had been offered by the Government concessions for the operation of certain oil fields and that Mr. Sinclair had joined with him for the development of one of these concessions known as the Baku Oil Fields. That the Russian Government called upon them to take over certain of these valuable territories which were not covered by their concessions, which Mr. Sinclair refused to do. At this point in Mr. Day's testimony, objection was interposed and it was offered to prove (R. 819) as showing the condition of Mr. Day's mind at the time he employed the Burns agency, that the Russian Government required of them

to develop their concessions and in so doing to interfere with and actually to confiscate private interests, which under the direction of Mr. Sinclair they refused to do. That immediately their competitors in the oil business knowing of that, made application and exerted influences which resulted in the withdrawal of these concessions by the Russian Government from the Sinclair interests and the conferring of those concessions upon their competitors, who went ahead and did what they (Sinclair and Day) refused to do, that is to say, in the exercise of the power conferred under the concessions, despoil private property and private interests. The proffer of proof is extended on page 820. Mr. Day testified (820), "I went to Europe continually for the Sinclair interests, Italy, France, Spain, England, all the Northern countries and southern countries on the question of concessions, foreign policy, exchanges, one thing and another. I came back to America in August, 1927. Meanwhile my friendship with Mr. Sinclair had grown. My contact with him since August 1st was to report to him fully on European conditions, on his different companies in which he was interested. I was in close daily contact with him. I opened his general mail that came in. He has a great deal more than any man can take care of and I believe I am confidentially trusted and I am allowed to do it. I answer a great deal of it. His mail came in in every condition, a large portion opened, unsealed before it was delivered to our offices and it was apparent that it had been opened. I reported that fact to Mr. Sinclair."

Q. Were you or not followed by unidentified people that you did not know?

Objection to this question was sustained and the following proffer of proof made.

> (821) "that he was continually followed on the street, up about clubs, and going to and from his home, by men whom he did not know by name or by identity, but whose physiognomy and physical identity he knew because of the fact that the same man would follow him for periods of a few days, and then another man who had followed him before, took up the following and followed him again for a few days; and that this occurred innumerable times, and he reported it to Mr. Sinclair; that he has observed on numerous occasions continuously when he was abroad with Mr. Sinclair, Mr. Sinclair and himself were both followed continuously, in New York, in Washington and other cities, about hotels and clubs and business places, and about their homes." "* * * that those facts were in his mind when he employed the Burns Agency at Mr. Sinclair's direction. * * * That he believed that some enemies of theirs, or unidentified persons whom he did not know, might undertake unlawfully to tamper with the jury and produce an unlawful and improper verdict."

This testimony was all excluded under exceptions. Mr. Day testified that when he employed the Burns Agency, he knew that W. J. Burns had been for many years chief of the Bureau of Investigation of the Department of Justice of the United States. He was asked:

> Q. On that day did you know whether or not it was the custom of the United States District Attorney of the City of New York to shadow through representatives of the Department of Justice jurors engaged in the trial of criminal cases in the United States courts in that city?

Objection to this question was sustained, an exception noted and the proffer of proof made (R. 822).

He was further asked (R. 822):

> Q. At that time was it or was it not a matter of public common knowledge in the City of New York that the custom of the United States District Attorney in the trial of criminal cases in the United States courts in the City of New York was to shadow juries after they were impanelled and sworn, and during the trial?

Objection to this question was sustained, exception noted and the proffer of proof made.

The following was asked:

> Q. Did you or did you not know of instances in New York, through public discussion, in which jurors had been followed, jurors empanelled in the United States Courts there, by representatives of the Government and the Department of Justice, during the trial?

Objection to this question was sustained, exception noted and proffer of proof made. (R. 822)

Mr. Day testified (R. 835) that in talking with Mr. Sinclair he spoke about an incident in the Mayflower Hotel when "I saw a certain man."

> Q. Will you relate that incident?

The question was objected to, objection sustained, exception noted, and it was offered to prove that if the witness were permitted to answer he would testify that this man was the man who had been in the employ and was in the employ of certain of their competitors, and who, to the mind of the witness, was

known in the parlance of the street as one who did the "dirty work" for them. (R. 836)

The foregoing items of evidence were revelant on many grounds in the first place, the petition by averring the purpose which actuated Mr. Day in taking part in the surveillance put the condition of his mind in issue; and the condition of his mind being in issue he had a right to show the Court the facts and knowledge which his mind contained so that it could make up its mind what its real purpose was. Moreover, according to the decisions of the Supreme Court above cited, even though the petition had not directly put in issue the condition of his mind, he had the right on a charge of contempt of court, to testify that his purpose was innocent, in mitigation of sentence; and further, to portray to the Court the facts which were present in his mind indicative of purpose, so that it, the Court, might judge for itself what real purpose actuated him.

What reasons will, or can be advanced for the exclusion of this evidence in mitigation of sentence, are inconceivable to the undersigned in the case of any man, and especially in the case of Mr. Day. His identity was well established; a man well and favorably known on both sides of the Atlantic; well known to and in intimate association with the best men in the Nation's capital, who hurried to the court to speak upon his character (R. 836-837) a man, who at the outbreak of the World's War, although not subject to draft, abandoned his own business interests and put himself at the disposal of his country; (R. 817-818) and who, on account of his vast foreign acquaintanceship and knowledge of the business of importing was immediately put in charge of the purchase of all the

food stuff for the American Army in France and who actually purchased the first thirty-five requisitions which were sent to this country on food stuff, prior to the inauguration of the Food Bureau in Washington. (R. 818) When this Bureau was organized he came to Washington and offered his services to Mr. Hoover, was sent to France to report to General Headquarters for miscellaneous work, was for a time aide to General Rogers, General in charge of the Headquarter's Corps, from there he was sent as chief of Liaison to the front in various capacities, then returned to the United States at the request of the French Government for the purpose of executing a special mission here; after the war was over honorably discharged with the rank of Major, and received the legion of honor with Croix de Guerre from the French Government. And yet the trial Court, after hearing from December 5th, 1927, until February 21st, 1928, evidence which did no more than prove the allegations of the answers of the respondents, and after itself having spent three months with the assistance of counsel in an effort to reach a conclusion upon whether Mr. Day had violated any law whatever in imposing sentence, confronted him with this (R. 859)

> "The Court: I will say to you, Mr. Day, that under the evidence in this case that you showed a loyalty to a friend and associate greater than your loyalty to the law of the land, and loyalty in friendship, I think, is a splendid virtue. But there is a higher loyalty than that. It is the loyalty *that a man owes to the institutions of his country; a loyalty to its laws; you have violated those laws.*"

Thereby establishing, that there was a fixed conviction in the mind of the Court that Mr. Day had intentionally and purposely violated the laws of his country and should be punished accordingly; and yet the court had consistently excluded all the evidence which Mr. Day had offered tending to prove the exact contrary and which, if it had been received, would have exonerated him from the very accusation for which the court condemned him. Other errors of law in the admission and exclusion of evidence are expected to be discussed in the briefs of other respondents and for that reason will not be repeated here; it is enough to say however, that with respect to all such rulings, Mr. Day also objected and preserved the point by proper exception or of proof, as the case may be.

That the judgment below should be reversed is

Respectfully submitted,

Daniel Thew Wright,
Philip Ershler,
Attorneys for Henry Mason Day.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928. No. 748.

Harry F. Sinclair, Henry Mason Day, William J. Burns, W. Sherman Burns, Appellants,

v.

United States of America, Appellee.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF UNITED STATES OF AMERICA.

I. APPELLEE'S COUNTER-STATEMENT OF THE CASE.

None of the four separate briefs filed by appellants contains a full and accurate statement of the facts.

Each appellant seeks to put a gloss of innocence and propriety upon those facts which he has elected to state in his brief for his own purposes. It is therefore imperative that all of the facts proved by the Government should be succinctly but comprehensively stated.

Such a statement will enable this Court to understand more readily the rigorous and searching espionage to which the petit jurors in the Sinclair-Fall conspiracy case were subjected by the Burns operatives in the employ of Sinclair. This espionage, which was assigned by the trial judge as one of his reasons for the declaration of a mistrial, commenced in the court room and culminated in (1) a sinister investigation into the financial obligations of juror Kern, (2) active efforts to ascertain the sentiments of juror Kidwell regarding the trial, (3) the fabrication of improper conduct on the part of juror Glasscock in order to provide material for a mistrial or a new trial, and (4) the provoking of a discussion among the jurors on the subject of shadowing and the arousing of the suspicion of juror Herzog in that regard.

A. Employment of Burns operatives.

Shortly after noon on October 18, 1927, in the Supreme Court of the District of Columbia, a petit jury was sworn to try Sinclair and Fall under an indictment for conspiring to defraud the United States (R. 2). The jurors were not kept together,

but were allowed to go to their homes at the close of court each day.

Immediately after the adjournment of court that afternoon (it then having become apparent that the jury would be allowed to disperse) Sinclair returned directly to his apartment in the Mayflower Hotel and stated to his assistant, Day, that he wanted from twelve to fourteen operatives with a lieutenant and a captain sent to Washington by the Wm. J. Burns International Detective Agency in order to cover the jurors in the case (R. 823). Sinclair directed Day to tell one of Sinclair's secretaries in Washington to call up Jeffries, personal secretary of Sinclair and then in charge of his New York office, and ask Jeffries to have one of the Burnses communicate with Day at a place which would be convenient to Day (R. 823). At the same time Sinclair handed Day a list of the jurors containing their respective histories and descriptions (R. 826). Roughly, the history of each juror contained his name and address, his religious persuasion and fraternal affiliations, his business connections, his habits and apparent weaknesses and other data (R. 79-83).

Day thereupon told one of the Washington secretaries of Sinclair to call Jeffries in New York City, and instruct him to have one of the Burnses call Day on the telephone at North 51, which is the telephone number at 2118 Leroy Place, Washington, D. C.—the private residence at which Day was then visiting (R. 824). The call was made; and Jeffries

in turn telephoned W. Sherman Burns at the main office of the Burns agency in New York City and requested him to call Day at the given Washington number (R. 397-98, 775). The telephone conversation between Jeffries and Burns did not last over five or ten seconds (R. 786-87).

W. Sherman Burns immediately called Day in Washington, who said that "this case is about to go along" and that "these people are not locked up and I would like to have them covered" (R. 776). Day was not inclined to discuss matters freely, and Burns did not know at first what Day meant or was talking about (R. 776). Day asked for ten or twelve operatives and made an appointment to meet that night in Washington whomever Burns should put in charge (R. 776, 787). They agreed upon "Jeffries" as the password (R. 786); and Burns told Day that he wanted a man of experience, judgment and discretion to supervise the work (R. 787). The conversation lasted some two or three minutes; and Burns promised to send one of his representatives to Day that evening at nine or ten o'clock (R. 787, 824-25).

Having selected Chas. G. Ruddy, manager of the Burns Agency in Philadelphia, as the man he would put in charge, W. Sherman Burns called Ruddy on the telephone, and asked him to take charge of a surveillance operation in connection with the case "that was going on in Washington" (R. 776-77). Ruddy did not understand what case Burns was talking about; and Burns then told him that "it was

described in the public prints," whereupon Ruddy said he knew what Burns was talking about (R. 777). Burns instructed Ruddy to go to Washington and present himself at the given address at the appointed time to Day from whom Ruddy should take instructions (R. 380, 776-78). Burns asked Ruddy how many men he could supply from the Philadelphia office and stated that he would send Ruddy men from the New York office (R. 380). Ruddy was requested to call back Burns as soon as he had received his instructions from Day regarding the operation (R. 378, 777).

That evening Ruddy proceeded to Washington and, using the name of "Jeffries" by prearrangement, met Day at the Leroy Place address (R. 78-79, 825). Day handed Ruddy the list of jurors which Sinclair had given him that afternoon, and told Ruddy that the jury in the Sinclair-Fall conspiracy case had not been locked up or kept together (R. 79, 825). Day then stated that he wanted Ruddy to place each of the jurors under surveillance and that he wanted twelve to fourteen operatives and a lieutenant in order to "hold" the jurors as closely as possible outside of the court (R. 83, 825). Day further stated that he wanted daily reports from these operatives through Ruddy; and told Ruddy what the case was but did not tell him whom Day was representing (R. 83-84, 825). Ruddy did not know who the client was and thereafter referred to Day as the client (R. 84, 133).

About midnight, Ruddy went to Baltimore where he was met by Charles Veitch, the Burns manager

in that city (R. 84, 378). They proceeded to the Baltimore office of the Burns Agency, from which office Ruddy telephoned W. Sherman Burns at Ossining, New York, and arranged the details of the Washington operation (R. 84, 238). In the course of that conversation Ruddy related to Burns the substance of Day's requirements and they then discussed finances (R. 84). Burns agreed to send money to Ruddy as required (R. 84). Ruddy returned to Washington at 4.30 A. M. (R. 176).

The next morning, October 19, 1927, operatives from the New York, Philadelphia and Baltimore agencies began to arrive in Washington. These operatives had been instructed to report to Ruddy for surveillance work in Washington but were not told in what connection this work was to be done (R. 562, 570, 583). They were met on arrival by Ruddy and his secretary, Robbins, and were broken up as a group and assigned to different hotels according to a list previously prepared by Ruddy and Robbins (R. 84, 110, 121, 138, 169, 237, 238, 245, 382, 385, 398 and 570).

Those operatives who had not left at home their credentials evidencing their connection with the Burns agency, under instructions from their local manager, had their credentials taken away from them (R. 384, 438, 462, 467, 562 and 569). Each operative was given a certain symbol by which he was thereafter designated (R. 86). These working designations are as follows (R. 86):

Operative's Name	*Symbol or Designation*
Steer	S-81
Stewart	S-71
Sullivan	S-70
O'Neill	O-3
Merritt	M-20
Long (McMullin)	L-36
Knowles	K-37
Klein	K-27
Kirby	K-1
Homerighausen	H-4
Dwyer	D-9
Brennan	B-4
O'Reilly	O-14
Robbins	X-12

Each operative was told by Ruddy or Robbins to remain in his hotel room until he heard from Ruddy (R. 100, 128, 238, 241, 243, 246, 249, 253, 254, 262, 547 and 562). He was also told that the operatives were to keep separated, while on this operation; and that they were not to know each other, except when necessary or proper (R. 566).

B. Their instructions and activities during the first week of trial.

Shortly after their arrival, Ruddy assigned a Burns operative to each of the twelve jurors with the exception of Flora, who was described in the history appended to the jury list handed Ruddy by Day as "very bull-headed" and was consequently never

shadowed (R. 80, 85). Ruddy specified each juror by his jury box number and instructed each operative to come down to the court room and pick out his particular juror (R. 85, 112, 121, 128, 140, 145, 154, 171, 242, 246, 438 and 452). The operatives were further instructed by Ruddy to hold under surveillance the jurors as they left the court room until they went home and up to a reasonable hour at night (R. 85), and to report to Ruddy each day (R. 85). Each operative was required to make out a daily handwritten report, which was to be signed by his symbol and not his name (R. 85).

Pursuant to Ruddy's instructions, the operatives came down to the District Court room and got their "spot" on their subjects (R. 140, 239, 245, 250, 259, 267, 269, 270, 279, 439, 452, 474 and 527). Some of the operatives had to wait in line for their turn to get into the court room. Most of the operatives left the courtroom as soon as they had "spotted" their subjects in the jury box from the numbers given them by Ruddy.

The daily reports, which were offered in evidence by the government (Government Exhibits Nos. 10-315, R. 90-370), revealed that before a juror awakened in the morning a Burns operative was in the neighborhood of his home. Each juror was kept under the closest surveillance by an operative from the moment the juror left his house until he arrived in court and the morning session had commenced. During the noon recess of the court, each juror was again

"spotted" as he left the court house and kept under watch during the lunch hour. Frequently, the operatives ate at adjoining tables and all luncheon companions of the jurors were carefully noted.

The reports further revealed that at three thirty P. M., the usual time for the adjournment of court for the day, the operatives were again in readiness and picked up their subjects once more as they left the court room, this time to remain with them during the remainder of the afternoon and evening up to and including the time that the absence of lights in the juror's home indicated that he had gone to bed. This necessitated some subjects being watched until three A. M.

The reports also showed that jurors were followed to their meals, to their churches, to their business appointments, to their places of amusement and to the homes of their friends. Operatives frequently boarded the same street cars as their subjects. Taxicabs were at first used by the operatives for their surveillance; but because taxicabs were too easily spotted, private cars were subsequently rented.

The reports further showed that a careful check was made, insofar as was possible under the circumstances, of everyone who came into contact with a juror at any time during the day or night. This was done pursuant to instructions given Ruddy by Day. Any person entering or coming from a juror's house was carefully observed and an effort was made to learn his identity. Automobiles in which the jurors

rode were noted and their license numbers were duly taken and turned over to operative O'Reilly, who thereupon went to the license bureau and thus ascertained the identity of the owners of such cars. Many of these owners were investigated by the operatives.

The handwritten daily reports of the operatives were collected each day after midnight by O'Reilly, the contact man and lieutenant of Ruddy (R. 159, 266, 284, 302, 316, 403-04). These reports were then edited by Ruddy and typed by Robbins, who served in the capacity of Ruddy's secretary (R. 85, 89, 399). Virtually all of these handwritten reports set forth the fact that the Burns operatives were unable to find any evidence whatsoever that the jurors were being shadowed by anyone else, but this fact was carefully deleted from the edited typewritten reports (R. 241, 250, 257, 261, 265, 267, 282, 315, 440, 475, 573 and 585).

The original handwritten daily reports were never shown to Day (R. 374); but were held by Ruddy until October 29, 1927, and were then forwarded by mail to W. Sherman Burns in New York City (R. 85, 89). They were received in the New York Office of the Burns agency on the morning of October 31st (R. 778).

The edited typewritten reports, however, were daily delivered to Day, commencing October 20th; and were read and discussed each day thereafter by Ruddy and Day (R. 372-73). After looking over the reports

with Ruddy, Day then submitted each day four or five selected reports to Sinclair, and in particular the reports dealing with Kidwell, Kern and Glasscock (R. 826-27).

On Saturday, October 22, 1927, the fifteen Burns operatives met in O'Reilly's room at the Mayflower Hotel between midnight and one A. M., for the purpose of shifting the operatives around from one juror to another (R. 381, 407, 461). This shifting of operatives was for the purpose of preventing "burning," *i. e.*, apprehension of the operative by the subject being shadowed; and was done pursuant to the policy of not keeping one operative constantly on one juror (R. 381-82).

On this same day, operative Kirby rented a room diagonally across from the home of juror Holt in order that he might better observe this juror's home and movements (R. 88, 141, 294, 310, 326 and 574). It appears that Kirby had been anonymously warned to get out of the neighborhood (R. 326).

Money for the Washington operation was largely procured, not from the Washington office of the Burns agency but from the Baltimore office. On three occasions, Veitch, manager of the Baltimore office, came to Washington bringing $500 in cash which he turned over to Ruddy at the Wardman Park Hotel (R. 84, 231). The money so transmitted by Veitch was not the money of the Baltimore agency; but was money sent by W. Sherman Burns from the New York agency with instructions to deliver

it to Ruddy (R. 378, 782). In addition to these sums, Ruddy brought $100 from the Philadelphia agency and received another $200 from the New York agency, making a total of $1,800 (R. 231).

Veitch was never consulted regarding the Washington operation and was never told anything about its nature (R. 378, 782). Likewise, the Washington office was never advised of the operation, and Ruddy never conferred with or got money from it (R. 84, 782).

Besides forwarding the original handwritten reports to W. Sherman Burns, Ruddy sent him weekly statements which showed the amount of time spent, the expenses incurred, and the amount of money advanced to the various operatives employed on the Washington operation (R. 180). On October 26th, Ruddy wrote Burns a letter that read in part (R. 89):

> "Please find enclosed time and expenses for the four men who discontinued. I think it is self explanatory. • • •
>
> "It's been a tough time up to now mainly due to the fact that all interested parties are under an abnormal mental strain and I have had quite a job trying to get them to keep their feet on the ground, however up to now I have succeeded in doing so.
>
> "Will keep you advised from time to time just how things are progressing. • • •"

C. Concentration of the operatives upon jurors Kidwell, Kern and Glasscock during the second week of trial.

All fourteen operatives were kept on duty until Monday, October 24, 1927, on which day Ruddy was told by Day to discontinue the surveillance of the jury as a body and to concentrate the espionage on the three jurors, Kidwell, Kern and Glasscock (R. 86, 388, 828). Accordingly, seven of the operatives were sent home the next day and the remaining seven operatives thereafter confined their attention to the three jurors just named (R. 338, 339, 340, 344, 414).

Some time on that Monday, Ruddy went to Philadelphia (R. 179, 323). His daily report contained the statement that it was "necessary to proceed to Philadelphia to connect with other phases of the case" (R. 179, 323); but Ruddy never disclosed in his testimony just what these phases were or why it was necessary for him to go to Philadelphia in connection therewith. An earlier daily report disclosed that he had called Philadelphia by long distance telephone in connection with the operation on the preceding Friday night around midnight (R. 271).

The history of each of the three jurors, upon whom the operatives concentrated their espionage on and after Monday, October 24th, depicted each juror as living in humble circumstances, as financially not well off and as subject to certain minor vices and weaknesses (Govt. Exh. No. 1, R. 79-83). The activi-

ties of the operatives with respect to each of these three jurors will be considered separately and in turn.

1. Kidwell.

The description of Kidwell in the history attached to the jury list, which Sinclair handed to Day on the afternoon of the opening day of trial, and which Day delivered to Ruddy that night, read as follows (Govt. Exh. No. 1, R. 81):

> "Edward J. Kidwell, Jr., white, age 25, 1637 You Street, S. E., work for Knessi, leather goods, Protestant, organizations none. Single. This young man is the son of Edrans J. Kidwell who for 30 years has been employed (general labor) at St. Elizabeth's Insane Asylum. Juror has a brother who is a barber. Since becoming of age he has worked for Knessi Bros., (Trunks and Leather Goods, 409 7th Street). He was born in Anacostia, D. C. Educational local schools. **As a boy he was pretty wild, drinking and running around with rather a tough crowd. He has quieted down a little now but is still 'a sport'.**"

The foregoing memorandum was compiled from the reports procured by private investigators and credit agencies for George P. Hoover, Esq., one of counsel for Sinclair, and was in Hoover's possession at the time when the jury in the Sinclair Fall conspiracy case was selected (R. 839-40).

On or about Sunday, October 23rd, Sinclair told

Day that it might be a good idea "to find out if Kidwell and Kern were really substantial citizens" (R. 828). Day testified that he too wanted to know more about Kidwell (R. 828). Kidwell was then under surveillance by operative Klein, who had been assigned to this subject at the midnight conference on October 22nd, when all the operatives were shifted around (R. 136, 470). This surveillance was accordingly kept up.

Day had heard that Kidwell had a brother who was a barber (R. 829). This fact also appeared in the history of Kidwell (Govt. Exh. No. 1, R. 81). Day testified that in his estimation barbers are very garrulous; and that he wanted to know whether Kidwell's brother was employed "in any of those shops where he might be promiscuously talking about this trial or in any way expressing **anybody's ideas** about the trial with the clients that might come in" (R. 829). Day further wanted to know whether Kidwell's brother was employed as a barber in any of the prominent Washington barber shops (R. 829).

On Monday, October 24th, Day instructed Ruddy to get a designation on Kidwell's brother; and Ruddy immediately assigned O'Reilly, his contact man and lieutenant, to investigate Kidwell's brother and to start the investigation in the Anacostia section of Washington (R. 87, 162 and 415). O'Reilly went over to Anacostia that day in search of a barber named Kidwell (R. 415).

O'Reilly testified that he found many Kidwells in

the city directory, but that he went directly to 1637 U Street, S. E., at which address the juror Kidwell resided (R. 415-16). Representing himself to be an employee of the District of Columbia Health Department, who was visiting the premises for the purpose of having some papers signed in connection with the barber shop operated by Kidwell, O'Reilly had a brief conversation with the juror's mother, Mrs. Kidwell, during which conversation he inquired if Mr. Kidwell was in, and upon being asked which Mr. Kidwell, he replied "Mr. Kidwell, the barber" (R. 428-29, 506-07). He was then told by Mrs. Kidwell that Mr. Kidwell had his barber shop in the Myrtle Hotel, which O'Reilly knew was reputed to be "a sporting house" (R. 162-63). O'Reilly erroneously assumed that Kidwell the barber was the brother of the juror Kidwell and did not realize that he was in fact the father of the juror (R. 162-63).

The visit of O'Reilly to the Kidwell house was reported to juror Kidwell by his mother that evening (R. 507). The time of the visit was fixed by Mrs. Kidwell as approximately 4:30 or 5 o'clock in the afternoon, whereas juror Kidwell did not reach home that evening until 6 o'clock (R. 507). Mrs. Kidwell also told her husband, the father of the juror, about the visit, when juror Kidwell was present (R. 507).

After leaving the Kidwell home, O'Reilly proceeded to the barber shop in the Myrtle Hotel (R.

416). Upon arriving there, O'Reilly entered the barber shop; and using a suitable pretext, engaged the barber Kidwell in conversation (R. 163, 430). O'Reilly made some inquiries about a person named Stewart and then left the shop (R. 163, 416, 430). He then returned to the Wardman Park Hotel and orally reported to Ruddy (R. 164). Day was standing in the room within four or five feet of O'Reilly and overheard him say that "it was a disreputable barber shop in a disreputable hotel" (R. 164, 829). That night Ruddy spoke to Day about O'Reilly's trip (R. 162); and Sinclair and Day consulted about the inquiries which Day had directed to be made about the barber Kidwell (R. 834).

O'Reilly asserted in his testimony that he did not know he was visiting the house of the juror Kidwell when he called at 1637 U Street, S. E. (R. 430); and that he did not learn this fact until his return to the Wardman Park Hotel that night (R. 430). He further testified that he did not know the initials of juror Kidwell, despite the fact that the city directory contained the names of many Kidwells (R. 416, 430). But the address and initials of Kidwell were correctly given in the history of the juror Kidwell which Ruddy had received from Day on the opening day of the trial; and this history was in Ruddy's possession at the time of O'Reilly's visit.

The testimony of O'Reilly is disproved by his daily hand written report of October 24, 1927, which reads in part as follows (R. 163):

"MONDAY, 10/24/27.

"C. G. R., G. J. R.

"#014.

"N. Y. 5023.

"Subject: Brother of Juror #5, Kidwell.

"Under instructions received from Mgr. C. G. R. I. made an investigation of juror Kidwell's brother.

"I went to the residence address as given, after being unable to obtain any information nearby the house, and interviewed some woman who answered the door.

"By using a suitable pretext and after quite a lengthy conversation, I obtained the following leads.

"The brother of #5 in whom we are interested, is named Edward Kidwell and is the barber maintaining a shop in the Myrtle Hotel on Upper Nichols Ave in a section called Congress Heights.

"I went to this place some distance from the city proper and made inquiry in this neighborhood among those who could give me a line on this barber without arousing suspicion.

"The reputation of the Myrtle Hotel is not so good. This place is called the Myrtle House and commonly called a sporting house."

* * * * * * *

2. *Kern.*

Kern was the other juror, concerning whom Sinclair had said to Day, on or about Sunday, October 23rd, that it would be a good idea to find out if he

was really a substantial citizen (R. 828). The history attached to the jury list described Kern in the following language (Govt. Exh. No. 1, R. 80):—

> "John P. Kern, Age 30, 1315 North Carolina Ave., N. E., salesman for Holmes Baking Co., Protestant, organizations none, married, one child. This juror was born in Washington, a family of bread bakers and bread wagon drivers, his father was a baker (C. Kerns and Sons) (German descent). This boy and his brother have driven bread wagons for Holmes & Sons since becoming of age. He was educated in local schools, grade but not high. **He is quite a sport. Will go to the races whenever he can. Takes a drink and takes a chance on any kind of a bet.** No Government connections. My informant states that he does not think Kern ever served on a jury before."

The Burns operatives had kept juror Kern under strict surveillance from the opening day of trial (R. 113, 151, 556). Ruddy and Day had conversed specifically about him and about the investigation of him (R. 830). Day told Ruddy that he wanted to know something about juror Kern, who did not live up at all to his history; and that he believed that Kern was irresponsible and that he (Day) was very anxious to find out about his responsibility (R. 87, 203, 204, 373, 830). Day further told Ruddy that he was particularly anxious to find out if there was any encumbrance on Kern's property and also if Kern met his financial obligations (R. 87, 204).

On or about October 26, 1927, Day asked Ruddy

what was the best way of finding out how responsible juror Kern was, to which question Ruddy replied "a general credit check" *i. e.*, a check to see whether he owned his own home, whether there were any encumbrances on the property and whether he met his obligations (R. 87, 204). Day and Ruddy agreed that such an investigation should be made regarding the juror Kern (R. 830); and Ruddy thereupon instructed O'Reilly to find out whether juror Kern owned his house and to make a general credit report upon him (R. 88, 421).

During the first week of the trial, Day had asked Britton Brown, a partner in the real estate offices of Randall H. Hagner and Company, where Day could look up a mortgage; and Brown immediately offered the services of his company to Day (R. 389, 390). On October 26, 1927, Day personally went to the office of Hagner and Company and asked for Mr. Brown (R. 391). The latter was not in; and so Day got in touch with Mr. Dove of that company (R. 391), and asked him if there were any encumbrances on Kern's property (R. 391). In consequence of Day's inquiry, Dove had an employee named Anderson investigate the property; and it was discovered that there was a $4,000 trust on the house of juror Kern, which had been materially reduced and was being reduced by payments of $40 a month and which was held by a building and loan association (R. 391, 393, 395, 830-31).

On the 28th day of October, 1927, operative O'Reilly

visited the District Building and the office of the Register of Deeds in order to ascertain what, if any, encumbrances were on the home of the juror Kern and also the identity of the parties holding any such encumbrances (R. 421).

On October 21, 1927, Day directed that the brother of juror Kern should be shadowed in order to ascertain how juror Kern "could be riding around" Washington in automobiles (R. 90, 151, 373, 375, 832). The next morning Ruddy assigned two operatives, Dwyer and Steer, to the duty of trailing the brother, but did not tell them why he was placed under surveillance (R. 292-93, 375, 534, 549-50). Dwyer kept the brother's residence under surveillance but failed to get a designation upon him, which failure was reported to Ruddy the following day (R. 410, 552-53).

Steer made inquiries about juror Kern in the neighborhood of his home and thereby learned from a woman neighbor that Kern's next door neighbor was a Mr. Vogt (R. 91, 321, 536-39, 556). Steer also learned from this woman neighbor that Vogt was employed by the railroad and was reputed to have made a thousand dollars "easy money" some years before for granting favors during an influenza epidemic in handing out permits for preference in the shipping out of bodies (R. 91, 321, 538-39). In consequence of this information, O'Reilly on October 23rd assigned Steer to trail Vogt (R. 409); and thereafter Steer went to Vogt's home in order to get a designation on Vogt (R. 91, 321).

Juror Kern testified that his sister had married a man named "Vogt"; but not the Vogt in question (R. 556-57).

3. *Glasscock.*

Among the operatives brought down by Ruddy from the Philadelphia agency for the Washington operation was McMullin, who had obtained employment with that agency, shortly before the jury espionage began, under the name of Long (R. 614). Upon his arrival in Washington on the morning of October 19, 1927, McMullin was given the designation "L-36" and was assigned to the surveillance of juror Glasscock, whom he trailed without interruption until October 29th, despite the general shifting of all other operatives at the midnight conference on October 22nd (R. 614).

Juror Glasscock was depicted in the history attached to the jury list as follows (Govt. Exh. No. 1, R. 81):—

> "Norman L. Glasscock, 1013 8th Street, N. W., age 47. Rec. Clerk Somerville Co. He is married and they have two children. Been residing at this address for several years. This address is an old frame shack, poor appearance, dirty general condition and in downtown rooming house district. Part of the house is occupied by others. He has been employed by the Thos. Somerville Co., 312 13th Street, N. W., wholesale plumbers supplies, as a receiving clerk at $40 weekly and has been with the firm for 15 or 18 years. **He is said to be**

a big, fat, lazy chap who takes the easy side of life, loves to fish, does a lot of loose talking and cursing, and has no particular political or religious affiliations. He takes no pride in his personal appearance. He and his whole family go down in the country every Sunday in their old car and fish. The records show an old unpaid judgment standing since July 16, 1924, for $12 due the Washington Business Bureau."

On October 19, 1927, Ruddy told McMullin that the jury had been charged by the judge not to talk about the case or read newspaper accounts thereof; and instructed McMullin to put in his daily reports at the very first opportunity the fact that juror Glasscock had been detected reading a newspaper (R. 617). Pursuant to these orders, McMullin handed in a report for October 20th embodying the statement that during the noon recess that day Glasscock had purchased a newspaper in a nearby store and had read the same while walking very slowly towards the court house and had dropped it against a house but a short distance from the court house (R. 122, 263, 617). McMullin admitted the falsity of his report but testified that he had made it at the specific direction of Ruddy (R. 617).

On the morning of October 22nd Ruddy came to McMullin's room in the Harrington Hotel and told McMullin that something had gone wrong in the case the day before and that it looked very bad for Sinclair (R. 618). Ruddy had a list of numbers and told

McMullin to mark down the two numbers U-202 and P-1738, which were automobile license numbers (R. 618). He gave McMullin the description of a man and directed him to put the driver of license number P-1738 (an Oakland roadster) in conversation with juror Glasscock at Potomac Park (R. 618). McMullin stated that he did not know much about the park, to which Ruddy replied that he didn't know much about it either and then instructed McMullin to have the conversation take place at the Potomac Flying Field (R. 618-19).

When Ruddy came into McMullin's hotel room that morning, he had a bunch of papers in his hand (R. 619). Ruddy told McMullin that this stuff would be used for a mistrial, but that in all probability it would not be necessary to use it (R. 619). Ruddy also told McMullin that "Sinclair was going to spend plenty of money to get out of this as he had to"; that Ruddy felt sure that no "Department of Justice agents were trailing these men or shadowing the jury" and that "we had to show the client something" (R. 619).

That evening McMullin handed in a false report to the effect that juror Glasscock had driven to his home at noon that day, followed by a Chevrolet coupe with a license number U-202; and that after work that afternoon, juror Glasscock had been followed home by an Oakland roadster with P-1738 as its license number (R. 123). The false report further stated that juror Glasscock and his family thereafter drove to the Potomac Flying Field where Glasscock

had a conversation for about twenty minutes with the driver of the Oakland roadster (R. 123).

The registration number P-1738, as given by Ruddy to McMullin and incorporated in his report of October 22nd, would indicate that the owner of the Oakland roadster was Horace R. Lamb, Esq., a Special Assistant to the Attorney General of the United States and a graduate of Cornell University as well as Cornell Law School (R. 662-63).

Day testified that he had known Mr. Lamb for some years and also knew from where he came (R. 835). He further testified that he knew why Mr. Lamb had come to Washington and that Mr. Lamb had been proposed for some of Day's clubs in that city (R. 835).

Mr. Lamb testified that on the afternoon of October 22, 1927, he played golf at the Washington Country Club and that his automobile, about the time in question, was in the garage of Aikens' near Rhode Island Avenue (R. 660-61). He further testified that he had never seen juror Glasscock in his life until they were introduced in the office of the United States Attorney during the grand jury investigation that followed the mistrial and the disclosure of the jury espionage (R. 660-61). He also testified that he had never been at the Potomac Flying Field in his life, and that in going to the Washington Country Club on the afternoon of October 22nd he had proceeded there by way of Key Bridge (R. 660-61). The Potomac Flying Field is situated at the south end of Highway Bridge (R. 660-61).

Juror Glasscock was called as a witness by the Government and testified that on the afternoon of October 22nd he remained at his place of employment until a quarter of three at which hour he went home to attend a small birthday party in honor of his eleven year old daughter (R. 660-61). He further testified that he was not at the Potomac Flying Field that afternoon at any time, nor had he ever visited that place (R. 660-61). He confirmed the testimony of Mr. Lamb that they had met for the first time in the United States Attorney's Office during the grand jury proceedings, adding that he had never known of the existence of Mr. Lamb until the time of such proceedings (R. 660-61).

Aikens, the proprietor of the garage in which Mr. Lamb's car was on October 22, 1927, was called to the witness stand by the Government and confirmed Mr. Lamb's testimony that his car had remained there until between 1 and 2 o'clock that afternoon (R. 675-76).

During the second week of trial Mr. Lamb was respectively trailed by operatives O'Reilly, Merritt and Steer, as well as by Ruddy (R. 118, 167-68, 417-21, 478, 540-41); but such espionage disclosed nothing which in any way connected him with the juror Glasscock or any other juror, or with Government counsel.

McMullin had reported on October 19th that juror Glasscock had been in contact with a man driving an automobile with license number P-993 (R. 160). Upon investigation, Ruddy discovered that a man named Burr was the owner of the car, and thereupon

he instructed his contact man and lieutenant, O'Reilly, to make an investigation of Burr (R. 160, 285). Thereafter, operatives Steer and Sullivan were assigned to the duty of trailing Burr who was described as a friend of juror Glasscock (R. 105, 106, 303, 459, 541).

Sullivan attempted on October 22nd to establish contact with Burr; and during the course of the day he twice 'phoned Burr's home, first talking with his wife and later in the day talking with Burr himself (R. 303, 459). The surveillance of Burr continued until October 30th, during which time many efforts were made to establish connections with him (R. 303-04, 317, 387, 460). To that end Sullivan cultivated a man named Simmons, who personally knew Mr. Cafritz, the employer of Burr (R. 303-04, 317, 460).

When Sullivan was assigned to the surveillance of Burr on October 22nd, he was instructed by Ruddy to go out and conduct a character investigation of Burr, to meet him personally and find out just what type of man he was and to discover if he had loose morals, and so forth (R. 463-64). Just what "and so forth" meant appeared from Sullivan's testimony to the effect that he **"wanted to know whether or not he (Burr) was capable of playing with a juror or approaching a juror"** (R. 461).

On October 26, 1927, Ruddy came into McMullin's room at the Harrington Hotel and said that the government had $100,000 to spend on the jury and "Sinclair was going to spend $200,000 on the jury" (R. 620). On Saturday, October 29th, Ruddy as-

signed operatives O'Reilly and Merritt to place juror Glasscock under surveillance (R. 422, 478). That afternoon Merritt purchased a camera to be used in connection with the Washington operation (R. 86, 119, 225, 361, 478 and 479). This purchase was ordered by Ruddy and was made with the knowledge and approval of Day (R. 86, 832).

About noon on October 29th McMullin was told by Ruddy to return to Philadelphia, and was also told that "something was going to break in the case over the weekend" (R. 627). McMullin had previously gone to former Governor Pinchot of Pennsylvania, then in Washington, and confided to him the complete character of the Washington operation (R. 620). In consequence of that conversation, he was taken to the office of Special Counsel in the Transportation Building by Governor Pinchot's secretary, at which office he detailed to Special Counsel the activities of the Burns operatives in the Sinclair-Fall conspiracy case (R. 620).

The espionage was concluded by the service of a search warrant at the headquarters of the operatives in the Wardman Park Hotel on the morning of October 31, 1927, at which time the Government seized the daily reports and other documents pertaining to the Washington operation. On November 2nd a mistrial was declared in the Sinclair-Fall conspiracy case.

D. Efforts of appellants to justify the espionage.

On November 1, 1927, a newspaper man in New York called William J. Burns on the telephone to inquire whether or not he desired to make a statement concerning the Washington operation (R. 745). Burns testified that he had nothing to do with the employment of the Burns operatives by Day, and that this telephone call was his first knowledge of the jury shadowing operation in Washington (R. 745). It appears from the testimony that Burns had retired from active control of the Burns Agency in 1921 upon assuming the position of Director of the Bureau of Investigation of the Department of Justice; and that in recent years his only connection with the agency was financial in the matter of the receipt of $5,200 yearly as its advisor (R. 774-45). It further appears that Burns usually came to the New York office approximately once every two weeks (R. 775).

W. Sherman Burns testified that he did not consult with William J. Burns before accepting the employment by Day for the Washington operation, and did not discuss this employment or operation with Burns until November 1st after the publicity of the seizure of the Burns records (R. 775).

On November 2, 1927, William J. Burns personally 'phoned Thomas Lodge, an attorney in Washington and a former Assistant United States Attorney (R. 738). The object of the call was to avert the notoriety with regard to the Burns Agency emanat-

ing from the proceedings in the United States Attorney's office and before the grand jury (R. 738). That same day W. Sherman Burns was engaged in reading the daily hand written reports of the operatives which had been received in his office from Washington on the preceding Monday, October 31st (R. 778).

On November 3, 1927, the original hand written report of McMullin, dated October 22, 1927, and dealing with the spurious meeting between juror Glasscock and Mr. Lamb at the Potomac Flying Field, was sent down by W. Sherman Burns from New York City to Washington by a special messenger in response to Ruddy's request that the client (*i. e.* Day) and his attorney wished it (R. 778, 784).

McMullin had returned to Philadelphia the previous day in accordance with Ruddy's instructions "to get out of the court house before they could serve a subpoena" on him (R. 622). Ruddy told him to return to Washington the next morning as they were bringing his report of October 22nd down from New York (R. 622). Accordingly, McMullin returned to Washington the next morning in company with Welchans from the Philadelphia agency (R. 622). Welchans and McMullin proceeded to the office of Daniel Thew Wright, Esq., a Washington lawyer, and waited for Mr. Wright's return from court that afternoon at 4 o'clock (R. 622). In the meantime Welchans charged McMullin to keep Mr. Wright from knowing the falsity of the report of

October 22, 1927 (R. 622). Upon his return from court Mr. Wright called Ruddy and it was then decided that McMullin should not make his affidavit regarding the alleged meeting between juror Glasscock and Mr. Lamb, until the three met that evening in Ruddy's apartment in the Wardman Park Hotel (R. 622-23).

That evening Ruddy likewise charged McMullin to keep Mr. Wright from knowing the falsity of the report of October 22, 1927; and told McMullin that Ruddy wanted him to make an affidavit based on the report and there would be nothing more to the case (R. 622-23). Ruddy further told McMullin that William J. Burns wanted the affidavit made for the client and that it would be pretty bad for McMullin if he did not go through with it (R. 623).

Later that evening an affidavit was dictated by Mr. Wright setting forth the alleged facts with regard to the Potomac Flying Field affair (R. 623, 734). Mr. Lodge, the Washington attorney representing William J. Burns, was present at the time and assisted in preparing the affidavit (R. 734, 738). McMullin testified that neither Mr. Wright nor Mr. Lodge knew anything about the false character of the affidavit that they prepared.

After the affidavit had been prepared and executed (Govt. Exh. 352, R. 623-25), Ruddy directed McMullin to get out of Washington right away; and consequently McMullin left for Philadelphia about one o'clock in the morning (R. 625).

The following morning, November 4th, Mr. Lodge presented himself at the chambers of Justice Siddons who had presided at the Sinclair-Fall conspiracy trial and had declared a mistrial in that case (R. 695). Justice Siddons was at that time faced with the duty of taking such action as he deemed appropriate regarding the jury espionage, which was one of the causes for the mistrial (R. 695).

John Fitzpatrick, secretary to Justice Siddons, testified on behalf of the Government that Mr. Lodge on this occasion handed certain affidavits to Justice Siddons, stating that he represented the Burns people and was presenting the affidavits on behalf of the Burnses (R. 695). He further testified that Mr. Lodge used the names "William J. Burns" and "The International Detective Agency"; and that Mr. Lodge told Justice Siddons that the affidavits were for the information of the Justice (R. 695).

The affidavits so handed Justice Siddons by Mr. Lodge were the McMullin affidavit (Govt. Exh. No. 352, R. 623-25), and the affidavit of O'Reilly, the contact man and lieutenant of Ruddy, in the Washington operation. The O'Reilly affidavit was drawn in Ruddy's room at the Wardman Park Hotel on the evening of November 3rd at the time of the preparation of the McMullin affidavit. The O'Reilly affidavit contained the statement that O'Reilly had duly investigated the ownership of the car mentioned in McMullin's daily report of October 22, 1927, as having been driven to the Potomac Flying

Field and that such investigation disclosed that the car was owned by Mr. Lamb, Special Assistant to the Attorney General.

Several days after November 4th, Justice Siddons turned over the affidavits to Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, who duly filed them of record (R. 695).

W. Sherman Burns did not go to his office in New York City on November 4th, but on his return to work on November 5th he found on his desk carbon copies of the McMullin and O'Reilly affidavits, which had been prepared on Thursday night, November 3rd, and had been submitted by Mr. Lodge to Justice Siddons on Friday, November 4th (R. 778-79). The two affidavits had been brought back to the New York office by a Burns operative (R. 778).

On the evening of November 5th, W. Sherman Burns and Ruddy met William J. Burns at the latter's rooms in the Woodward Hotel, New York City, where they had come in order to discuss the Washington operation generally (R. 779). Both Burnses had been previously subpoenaed to come to Washington and appear before the grand jury on the coming Monday morning, November 7th (R. 779).

In answer to a subpoena, William J. Burns appeared before the grand jury in Washington on the morning of November 8th (R. 779); and as he came out of the grand jury room, he conversed with a group of newspaper men standing in the hall outside (R. 673-75). Burns stated to these newspaper men

that the Government had been guilty of the only jury tampering and that affidavits to that effect had been filed (R. 673-75). He further said that on the preceding Friday, November 4th, he had filed with Justice Siddons the two affidavits disclosing what the Government through its agents had done (R. 673-75). Both Edward Duffy, of the Associated Press, and George Derno, of the International News Service testified that William J. Burns used the word "I" in making his statement about the filing of the affidavits (R. 673-75).

McMullin was subpoenaed to appear before the grand jury in Washington on November 9th (R. 626). On Tuesday morning, November 8th, McMullin and Ruddy returned to Washington from Philadelphia by train and were met at the Union Station by William J. Burns, W. Sherman Burns and Robbins, Ruddy's secretary during the Washington operation (R. 625). Ruddy introduced McMullin to both the Burnses, whom he had never met before (R. 625).

William J. Burns said to McMullin that he was glad to meet him, that he was glad to know that McMullin was going to go before the grand jury and that McMullin should stick to his story and affidavit just as Ruddy had previously told him to do (R. 625). Burns further said that he had given out a story to the newspapers that day in which he had told the Government where to get off and had called the Government crooked (R. 625).

The Burnses, Ruddy and McMullin then got in a

taxicab and went to the Washington office of Mr. Lodge in the Columbian Building (R. 625). Going up in the elevator, Ruddy told McMullin to let them do the talking in Mr. Lodge's office (R. 625-26). McMullin was left outside while the others conferred with Mr. Lodge; and after the conference, William J. Burns told McMullin to go over to the grand jury and stick to his story and affidavit and he **"would be well taken care of"** (R. 626). McMullin explained to William J. Burns that he could not identify Mr. Lamb and asked what he should do in case they wanted him to identify the man (R. 626). William J. Burns replied that "That is all right. Nothing in your report indicating that it is Mr. Lamb except the description" (R. 626).

McMullin appeared twice before the grand jury, and again met William J. Burns who assured him for the second time that he would be well taken care of (R. 626). On the afternoon of November 9th, William J. Burns met McMullin at the Union Station and told him to return to Philadelphia and get his car (R. 626). Burns further told McMullin to come back to Washington and go out to the Potomac Flying Field in company with Ruddy and look over the lay of the land (R. 626-27). Burns also instructed McMullin to get a look at Lamb's automobile (R. 627).

Upon his return to Washington, McMullin did not go to the Potomac Flying Field (R. 627). In fact, he has never been to that flying field in his life (R. 627).

McMullin, however, did try to locate Lamb's car and for two days he cruised around the vicinity of the Department of Justice and of Mr. Lamb's home in a vain search to locate the car (R. 627). McMullin was accompanied by operatives Robbins and Stewart during these two days (R. 627).

William J. Burns admitted on the witness stand that he had directed McMullin to go to the Potomac Flying Field but testified that the purpose of this visit was to enable McMullin to find someone who would recognize him as having been there on Saturday afternoon, October 22nd (R. 748). Burns further admitted that McMullin had asked him if McMullin would get in a "jam" over the flying field episode (R. 748). Neither Burns nor Stewart nor Robbins denied that a two day search was made for Lamb's car in order to enable McMullin to identify it.

E. Jurors discuss their espionage.

Although the jurors did not in fact know that they were being followed by operatives of the William J. Burns detective agency, yet the record abounds in instances tending to show that the espionage had penetrated their consciousness.

For instance, juror Kidwell testified that a number of jurors including Herzog, Holmes and Kern had discussed the subject of shadowing in the jury consultation room while the jury had been sent out from the court room during an argument on a question of law (R. 498-99). This conversation lasted for five

or ten minutes, during which other members of the jury came into the room (R. 499, 500). The two women members of the jury, Mrs. Bailey and Miss Heaton, were also present during the time that the subject "of being watched or shadowed or followed" was mentioned or discussed (R. 510-12). There was also a talk between Kidwell and either Miss Heaton or Mrs. Bailey on the subject of keeping out of trouble (R. 510-11).

In addition, juror Herzog testified, in answer to the question whether or not he was aware of being followed, that while not aware, he had a suspicion (R. 559-60). He also testified that while on his way home from court one day, he noticed a car driving slowly in back of him; and that when he stopped at his house, this car stopped on the opposite side of the street (R. 560). In going into his home, Herzog looked around and saw the man sitting in the car (R. 560). Herzog waited for a while and the man still remained in the car (R. 560). Finally Herzog went into his home, and when he came out, he did not notice whether the car was there still or had gone (R. 560).

Juror Herzog further testified that one day during the course of the trial he observed a man hanging about his place of business (R. 560). That man, Herzog believed, was the man subsequently known to him at the beginning of the grand jury proceeding as operative O'Reilly (R. 560).

Operative Knowles, who was shadowing juror

Herzog at the time, related in his report of October 24, 1927, that he saw Herzog talking at the door of a garage with another man (R. 131). Knowles was but a short distance away on the other side of the street (R. 131). Herzog and his companion looked suspiciously at Knowles, and then the companion left the juror, passed by Knowles, observed Knowles closely and returned to the garage (R. 131, 329, 579-80).

Knowles thereupon changed the position of his car (R. 131, 329, 579-80). Once more Herzog's companion looked towards Knowles; and leaving Herzog he passed Knowles and scrutinized the latter very closely (R. 131, 329, 580).

Juror Kidwell testified that he saw on a street car during the course of the trial a man who was afterwards revealed to him as operative Merritt (R. 482, 489, 505). In this regard it is to be noted that operatives repeatedly boarded the same street cars as their subjects (R. 242, 268, 327, 440, 454, 548, 572, 584 and 586).

Kidwell further testified that in coming out of a near-beer saloon on Four and a Half Street during the course of the trial he saw a man afterwards revealed to him as operative Klein (R. 482, 505). The latter was entering the saloon as juror Kidwell was leaving; and Kidwell stayed outside until Klein came out (R. 482, 505). Kidwell then watched Klein cross the street and kept him under observation until he turned up Virginia Avenue (R. 482, 505). Klein

had been assigned at the midnight conference on October 22nd when all the operatives were changed around to keep Kidwell under surveillance (R. 136, 470).

Kidwell also testified that a stranger came up and joined him on a bench at noon recess one day and asked Kidwell for tobacco and sat along side of him for some time (R. 484-86). Kidwell was never able to identify this stranger; nor was Kidwell able to identify another man who stopped him in the court house grounds one day and asked him if admission to the court room could be obtained and then asked what Kidwell thought of the trial (R. 490).

In the daily report of operative O'Neill for Sunday, October 23rd, O'Neill reported that juror Goucher (whom O'Neill was then trailing) knew that he was being followed by a cab containing O'Neill (R. 315-16, 531). The report stated that O'Neill followed Goucher, when the latter left his home in a truck bearing the name of his employer, W. S. Kenworthy; but that the subject turned back, saw the O'Neill cab coming and stopped (R. 315). O'Neill continued past Goucher and turned the corner; but Goucher doubled back on him and was waiting for O'Neill (R. 315-16). Knowing that Goucher knew he was being followed by the cab, O'Neill dropped Goucher and reported to O'Reilly (R. 316). The latter directed O'Neill to resume his trailing and do the best he could (R. 316).

Mrs. Bailey testified that on October 28th she was at the Convention Hall Bowling Alley and there

became aware that certain men were watching and observing her (R. 510-11). The record does not disclose the identity of these men.

Operative Brennan was cautioned by Ruddy to act as if he was crazy in the event that the juror should suspect that Brennan was following him (R. 583).

Operative Merritt, who was detailed to get a designation on Kidwell the barber, revealed in his report of October 25, 1927, that he was in the vicinity of the home of juror Kidwell that evening, when a man came out of a nearby house, got into his car and seemed very much worried about Merritt following him (R. 117). This man finally drove to a police sergeant who was parked in a car two blocks away (R. 117). The police sergeant stopped Merritt and told him that Merritt had been reported as a suspicious character (R. 117). After questioning Merritt very closely and telling Merritt that his instructions were to take in any strangers hanging around after 11 P. M., the police sergeant put Merritt in his car; but after talking to Merritt, he finally put Merritt on a trolley going into town and followed the trolley car for about ten blocks (R. 117). This episode took place shortly after a man answering the description of Kidwell the barber had entered the home of juror Kidwell at 10:30 P. M. (R. 117).

II. ARGUMENT.

A. Preliminary statement.

The primary question raised by this appeal is whether or not the activities of appellants under their jury espionage with the resultant declaration of a mistrial in the Sinclair-Fall conspiracy case, obstructed or reasonably tended to obstruct the due administration of justice so as to justify their conviction of criminal contempt.

This appeal also involves the subsidiary questions of whether William J. Burns was properly convicted of criminal contempt by reason of his knowledge of and connection with the procurement and submission of the false McMullin affidavit after the mistrial; whether the trial judge was justified in refusing to hear evidence of an alleged practice of jury shadowing on the part of Department of Justice agents, which evidence was proffered in exculpation or mitigation of the criminal contempt; whether the trial judge correctly admitted evidence of conversations among the jurors upon the subject of being shadowed; whether the trial judge erred in his rulings on the admissibility of certain other conversations; and whether the trial judge properly refused to dismiss the petition and discharge the rule either at the close of the Government's case or at the conclusion of the evidence.

As there are four separate briefs in this case with separate assignments of error, the Government, in the interest of brevity, will endeavor to group the several arguments and assignments of error, insofar as possible, and make a general response thereto.

B. The jury espionage tended to obstruct and did in fact obstruct the due administration of justice.

Appellants were convicted of criminal contempt under Section 268 of the Judicial Code (U. S. C. A. tit. 28, Sec. 385), which provides:

> "The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. **Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice,** the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree or command of the said courts."

Before entering upon a discussion of the facts and law upon which their conviction rests, we desire to summarize certain basic principles of the law of criminal contempt that are peculiarly applicable to the present case.

The Government submits that a jury is just as integral a part of a trial court as the presiding judge and is entitled to sit as triers of the facts untrammeled, unfettered, unimpeded and unobstructed by any distraction of any character whatever, and

in particular one provided by the defendant in a criminal case. It also submits that our institutions and our laws require a jury to pass on a case without interference on the part of anyone that serves to obstruct the even flow of justice.

The Government submits that the mere shadowing of a jury is contemptuous, in that whether or not the jury is aware of such fact there is interposed a condition which offers a constant threat to the serenity of mind and freedom from distraction which are the essential privileges of a jury. This principle is largely academic in the present case because the record discloses that the espionage comprised much more than shadowing, and because such espionage penetrated the consciousness of the jurors.

The Government submits that it is contemptuous for a defendant in a criminal case to have members of a juror's family and his friends shadowed, because this condition, if disclosed, possesses potentialities of further distraction of the juror unsanctioned by law.

The Government submits that the visit of a private detective to the home of a juror during the trial is manifestly contemptuous, especially when such visit is but a step in an affirmative attempt to ascertain the sentiments of the juror as reflected in the casual utterances or gossip of his relatives.

The Government submits that it is inherently contemptuous for a defendant in a criminal case to seek through his agents or through his detectives to ascer-

tain the financial status of a juror while the case is still in progress.

The Government submits that the fabrication by detectives in the employ of a defendant of improper conduct on the part of a juror, in order to establish the basis for a mistrial or a new trial, constitutes contempt of court, especially when such fabrication is subsequently embodied in false affidavits filed with the court.

The Government submits that it is inherently contemptuous for a defendant to direct his agents or detectives to meet a personal friend of a juror in order to discover if the friend has loose morals and is susceptible of approaching a juror.

The Government submits that acts are contemptuous if they have a reasonable tendency to obstruct justice.

The Government submits that a prosecution for criminal contempt does not fail simply because the acts complained of were not successful and failed of their object.

The broad scope of Section 268 of the Judicial Code clearly shows that Congress fully intended to punish as contempt of court any conduct that might in any way whatever obstruct or interfere with the free and even flow of justice through the courts. We have found no contempt case under this section involving either the bare surveillance of a petit jury or a jury espionage accompanied with such corrupt activities as are to be found in the present case. However, the absence of such a case

does not require that new law be made in order to cover the present situation. The law, as declared by this Court, is broad enough and vigorous enough to justify the conviction of appellants for criminal contempt.

In the case of

Toledo Newspaper Company, et al. v. United States, 247 U. S. 402 (1918),

the appellant newspaper had published matter, both in the form of newspaper articles and of cartoons, that was highly defamatory of a judge who was then considering an injunction case involving a street railway wrangle in the city of Toledo. The defamatory publications, according to the opinion of this Court, never reached the eyes or the attention of the trial judge, nor were the newspapers carrying such defamatory matters ever circulated in the court room.

The newspaper and others were cited for contempt, were found guilty, and were fined. On appeal, the conviction was affirmed both by the Circuit Court of Appeals for the Sixth Circuit, and also by this Court.

The opinion of Chief Justice White considers exhaustively Section 268 of the Judicial Code and the fundamental propositions of the law of criminal contempt, and concludes therefrom that any act which has a reasonable tendency to obstruct justice constitutes criminal contempt:—

(Page 416.) **"Under the case and the action of the courts below concerning it, nothing further**

would seem to be required to establish the correctness of that action, since no other course, under the statement, is possible compatibly with the sacred obligation of courts to preserve their right to discharge their duties free from unlawful and unworthy influences and, in doing so, if need be, to clear from the pathway leading to the performance of this great duty all unwarranted attempts to pervert, obstruct or distort judgment. Nevertheless, in view of the gravity of the subject, we proceed to consider and dispose of the elaborate arguments pressed to the contrary. They are all embraced by the three following propositions: first, that there was a total want of power in the court to treat the matters charged in the information as a contempt and punish it accordingly, as a result of the provisions of Section 268 of the Judicial Code (embodying the text of the Act of March 2, 1831, 4 Stat. 487); second, that, irrespective of the prohibitions of that act, there was a want of power to abridge the freedom of the press by punishing as for a summary contempt comments made by a newspaper upon matters of public concern; and third, that, whatever be the view of the two former propositions, as there was an entire absence of proof sustaining the ultimate inferences of fact upon which the court based its conclusion, such conclusion was wholly erroneous as a matter of law. We dispose of these propositions under separate headings."

* * * * * * *

(Page 421.) **"True, it is urged that, although the matters which were made the basis of the findings were published at the place where the**

proceedings were pending and under the circumstances which we have stated in a daily paper having large circulation, as it was not shown that they had been seen by the presiding judge or had been circulated in the court room, they did and could form no basis for an inference of guilt. But the situation is controlled by the reasonable tendencies of the acts done and not by extreme and substantially impossible assumptions on the subject. Again, it is said there is no proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by the publications and, therefore, there was no proof tending to show the wrong complained of. **But here again not the influence upon the mind of the particular judge is the criterion but the reasonable tendency of the acts done to influence or bring about the baleful result is the test. In other words, having regard to the powers conferred, to the protection of society, to the honest and fair administration of justice and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case.** The wrongdoer may not be heard to try the power of the judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

Appellants devote much time and space in their briefs to lengthy excerpts from the record, from the opinions of the lower courts and from the briefs of counsel in the Toledo case in order to show that

this Court was mistaken in its statement that the defamatory publications had never been brought to the attention of the trial judge. The opinion of this Court rests squarely on the assumption that the trial judge had never read or seen the libellous publications; and it is therefore immaterial what the record in the court below discloses. Besides, the Toledo case is cited by the Government not for its facts but for its declaration of the fundamental principle that any act which reasonably tends to obstruct justice constitutes criminal contempt.

We do not understand that counsel for appellants gainsay this basic proposition of law or contend that the Toledo case did not definitely declare this to be the law. There is, however, a half-hearted attempt in the separate brief of appellant Sinclair to destroy, if possible, the legal effect of the Toledo case by quoting language from the opinion of the Circuit Court of Appeals for the First Circuit in the case of *Coll* v. *United States*, 8 *Fed. (2nd) 20, (1925)*. It is indeed a novel contention that the decision of this Court may be overruled by a subsequent decision of an inferior court.

Many cases are cited by counsel for appellants in a vain endeavor to whittle down and subtract from the criterion of reasonable tendency as laid down in the opinion of the Toledo case. To this end a lengthy treatise upon "proximate causation" is attached to the brief filed on behalf of W. Sherman Burns, just as if "proximate causation" was synonymous with "reasonable tendency." None of the de-

cisions cited by appellants qualifies in any manner whatever the declaration by this Court in the Toledo case that the test for criminal contempt is the reasonable tendency of the acts complained of. Consequently, we deem it unnecessary to discuss these cases in this brief.

Even if this Court had found it necessary to hold that the defamatory newspaper articles had actually reached the trial judge in order to sustain the conviction in the Toledo case, such a finding could not harm the cause of the Government in the present case. There is no lack of proof in the present record to show that the jury espionage had penetrated the consciousness of the jurors despite the oft repeated assertion by counsel for appellants that no juror was ever aware of the surveillance.

The reason why appellants are so eager to demonstrate that the trial judge in the Toledo case had actually seen the libellous newspapers is to find support for their contention that the activities incident to the jury espionage did not reasonably tend to obstruct justice because no Burns operative ever approached, talked with or came in physical contact with any juror. They contend that simple surveillance of a jury without contact or attempted contact cannot constitute contempt of court; and that this is the present case. Such a contention is flatly contrary to the holding of this Court in the Toledo case that the standard for criminal contempt is the reasonable tendency of the offending acts. Appellants evidently seek by this contention to divert attention from the

many non-shadowing but sordid features of the present jury espionage upon which the government chiefly relies in sustaining the conviction below.

Although the activities of appellants and their agents and detectives have been fully set forth in appellee's counter-statement of the case (pp. 1-40, *supra*), yet we find it necessary at this point to restate these activities briefly and discuss them at length. This restatement and discussion will serve the two-fold purpose of (1) showing that the activities reasonably tended to and did in fact obstruct the due administration of justice, because they were largely instrumental in causing the declaration of a mistrial of the Sinclair-Fall conspiracy case on November 2, 1927; and (2) revealing the sinister motives and venal object that underlay the jury espionage.

On October 18, 1927, appellant Sinclair was faced with a most trying and unenviable crisis. That day marked the beginning of his trial on the serious criminal charge of having conspired to defraud the United States. If found guilty, Sinclair might be imprisoned for two years and heavily fined. This Court had previously found in a civil action involving the same facts as the pending criminal suit that Sinclair had covinously procured a fraudulent and illegal lease of Naval Petroleum Reserve No. 3, which lease was consequently cancelled with a heavy award of damages against his oil companies.

This perilous position was the impelling motive for the jury espionage and the resultant criminal contempt. It is not therefore surprising that when some

thing went wrong in the trial for Sinclair and it looked bad for him (R. 618), Sinclair was ready to spend plenty of money ($200,000 if necessary) upon the jury in order to get out of this situation R. 619-20). Having discovered that the jury was not being shadowed by anyone else it is little wonder that Sinclair concentrated his efforts upon those three members of the jury who were living in humble circumstances and were prone to the minor faults and weaknesses of a "sport."

At the adjournment of court on the afternoon of October 22nd Sinclair first learned that the jury were not to be held together throughout the trial, but were to be permitted to return each day to their homes and businesses. Sinclair did not wait long to avail himself of the opportunity thus presented. The moment he reached his hotel from court that afternoon, the machinery was set in motion that brought fifteen Burns operatives to Washington in order to participate in an espionage upon the jury.

The Burns Agency was employed and summoned to Washington in the most circuitous and secretive manner. Sinclair did not employ the Burns operatives, but directed his trusted assistant, Day, to hire them. Consequently Day was at all times known as the client, despite the fact that Sinclair was an old client of the agency and had had many prior dealings with it. This subterfuge was obviously resorted to because it concealed the identity of Sinclair as the employer and because it gave an air of disinterestedness to the employment.

Day did not call the Burns Agency in New York City direct; but pursuant to Sinclair's instructions, a long distance call was put through by one of Sinclair's Washington secretaries to Jeffries, Sinclair's personal secretary in New York, asking the latter to have one of the Burnses call Day in Washington. The Burns Agency, in response to Jeffries' call, did not call Day at Sinclair's apartment at the Mayflower Hotel, from where the original call to New York had been made. The call was put through to a private home in the city of Washington.

The telephone conversation between Jeffries and W. Sherman Burns, of the New York agency, lasted five or perhaps ten seconds; whereas the ensuing conversation between Burns and Day lasted two or three minutes. The language of the latter conversation was so guarded that Day refrained from mentioning either the name of the case or the fact that it was the jurors who were to be covered. The same guarded language is to be found in the subsequent telephone conversation between Burns and Ruddy that resulted in Ruddy being placed in charge of the Washington operation.

The brevity and reserve of these telephone conversations disclose that there must have been some prior arrangement about bringing the Burns agents to Washington. This is rendered more evident by the fact that William J. Burns, the founder of the agency, had spent several days in Washington during the week immediately preceding the trial. It will be remembered that Sinclair and Day came to Wash

ington a week before the trial began and took up their residence at the Mayflower Hotel on October 10th (R. 823).

William J. Burns came here on the 12th and left on the 13th (R. 750). Burns testified that the purport of his visit was to interview officials of the Department of Commerce with regard to a radio station at Sarasota, Florida. He accounted for his time on the 12th and on the morning of the 13th, but his activities during the remainder of that day were not disclosed. He told his client in the radio matter that he was going to his Washington office and could be reached there during the remaining portion of the day (R. 729).

When Ruddy came to Washington on the evening of October 18th, he did not meet Day at Sinclair's apartments in the Mayflower Hotel, but in a private residence at 2118 Leroy Place. When he presented himself at that address and asked for Day, Ruddy gave the alias name of "Jeffries" by prearrangement. Although Day gave Ruddy full instructions, he did not tell Ruddy whom Day was representing, and thereafter Day was referred to as the client.

Late that evening when Ruddy wished to talk with W. Sherman Burns, he did not dare use a telephone in the city of Washington,—even at the Burns Agency in that city. Instead, he went to the Baltimore agency, where long after midnight he telephoned W. Sherman Burns, not at the New York agency, but at Ossining, New York. During this conversa-

tion Burns agreed to send money to Ruddy as required.

The money used in the operation did not come from the Washington office of the agency, nor was it forwarded through that office. The record discloses that the local agency was never consulted and was not aware for an instant of the jury espionage. The money required to finance the Washington operation was brought in currency to Washington by Veitch, manager of the Baltimore office. Veitch made three trips to Washington, bringing $500 in cash each time. This cash was not the money of the Baltimore agency, but was forwarded from the New York agency with instructions to deliver it to Ruddy.

One wonders why the Washington operation was thus cloaked from its inception in secrecy and devious practices, if the espionage was perfectly legal, legitimate and proper, as appellants strenuously urge.

On the morning of October 19th, the Burns operatives began to arrive in Washington. Upon arrival they were deprived of their credentials and of all cards, badges and other indicia of their connection with the Burns Agency; and in lieu thereof, were given symbols by which they were thereafter designated. The operatives were not allowed to remain in a group at any one hotel, but were scattered from the Wardman Park Hotel, on the fringe of the city, through various hotels all the way down to the Union Station. They were instructed to keep separate and not to know each other.

The operatives were required to write daily reports of their work. These reports were not signed by name, but bore the mysterious symbols by which the respective authors were designated. Long after midnight each day these reports were collected from the various hotels at which the operatives were living.

Thus again we see this Washington operation, which appellants term as perfectly legitimate and proper, being carried on with the utmost concealment and with absurd precautionary measures, so that even in event of detection there would be little chance of the Burns Agency's connection becoming known.

Upon being assigned to their respective hotels each operative was instructed to remain in his hotel room until he heard from Ruddy. Shortly thereafter Ruddy assigned a Burns operative to shadow and hold under the closest surveillance each juror except the "very bull-headed" Flora. Ruddy specified each juror by his jury box number and instructed each operative to come down to the court room and there get his "spot" or "designation" upon his subject. In this way the shadowing began in the very court room while the Sinclair-Fall conspiracy case was in progress.

The operatives in many cases stood in line outside of the court room door for hours awaiting an opportunity to get into the court room so that they might scrutinize at close range the particular jurors to whom they had been detailed. Once the subject had been so "spotted," the operative left the court room.

Here was the beginning of this Washington operation, in the very precincts of the court, under the very eyes of the presiding justice. Once the operatives had procured their "spot" or "designation," so that the necessity for their entrance into the court room had passed, they lounged about the front of the court house, or in Judiciary Square, or across the street. The court house and its environs were subjected to a veritable avalanche of Burns operatives.

The scope of the surveillance that thus began in the court room was very broad and all-inclusive. Before a juror awakened in the morning it was customary for a Burns agent to be lurking in the vicinity of his home so that from the moment the juror stepped from his door until he reached the portals of the court house he was under the close observation of a detective. At noon recess he was trailed to and from his lunch. Frequently, operatives ate at the adjoining tables. At the close of the afternoon session of court, operatives were again lying in wait about the court house to follow the jurors as soon as they came out.

They were trailed through the streets of Washington to their businesses, their homes, and their places of amusement. Operatives repeatedly boarded the same street cars with their subjects. Operatives hung about the neighborhood of the juror's home until the darkened lights in the house revealed the probability that the juror had gone to bed. On many occasions the vigilance of the operatives did not cease until the small hours of the morning. One operative even went so far

as to hire a room in the neighborhood in order that he might better observe his subject. The surveillance was not relaxed on Saturday afternoons and Sundays, but the jurors were followed on their excursions, on their social activities, and even to their churches.

The espionage upon the jury continued in this manner during the first week of trial. Such espionage disclosed that the jurors were not being shadowed by any other party. Having thus gained this most important information, there was a radical change in the activities of the Burns operatives during the second week of the trial. Before taking up their malignant and mercenary concentration upon the three weak members of the jury, let us pause in order not only to consider and refute the fictitious reason assigned by appellants for the jury espionage, but also to show the real purpose and object thereof.

Sinclair in his testimony and in his sworn answer to the petition for contempt described certain malevolent influences which he feared would prevent him from having a fair and just trial by a jury of his peers. He stated that he entertained the greatest apprehension by reason of the fact that the jury was permitted at the close of each court day to disperse, to go to various parts of the city and to remain away from the control and supervision of the court each night. Accordingly, Sinclair and the other appellants urged on the court in their sworn answers, in their testimony, in their arguments, and in the briefs of their counsel, that the Burns operatives were brought

to Washington in order to make sure that no one else approached or tampered with the jury.

If these statements and testimony are true, and if any such anxiety in truth ever existed, why did not Sinclair or his counsel ask the court to confine the jury? It is a familiar practice in our criminal procedure; and was the practice followed in the earlier companion oil case, in which Doheny and Fall were tried on a like charge of having conspired to defraud the United States. Juries have been held together in the District of Columbia in the past and doubtless will be held together in the future.

Sinclair was represented by competent, capable and experienced counsel. If he were beset by these fears, why could not these counsel have had recourse to a practice long familiar in this jurisdiction and necessarily well known to them? By the simple expedient of keeping the jury together during the trial, all of Sinclair's alleged fears regarding malevolent influences could have been dispelled once for all.

Both the daily written reports of the Burns operatives and their testimony reveal without contradiction that the jury was not being subjected to any espionage save that of the Burns Agency. There is no instance of any juror ever having been trailed by employees of the Department of Justice; there is no instance of any juror's home having been visited by anyone save a Burns operative; there is no instance of any juror's relatives or friends being subjected to investigation and shadowing save by Burns operatives;

and finally, there is no instance of the encumbrances on any juror's home being investigated by anyone save a Burns operative. Furthermore, the handwritten reports of practically all of the operatives contain the statement that there is no one outside of a Burns operative shadowing a juror.

Now if the sworn answers and testimony of appellants, as well as the arguments of their counsel, are to be taken at face value (*i. e.*, if the real purpose of the "Washington operation" was to ascertain whether or not anyone else was shadowing these jurors or was seeking to tamper with them), it is manifest that appellants had their answer through the mouths of their own particular agents at the very inception of the trial. If the real purpose of the espionage was to find out if the jury were in danger of molestation on the part of the Government or of any of Sinclair's malevolent enemies, then the Washington operation might well have come to a complete stop upon the second or third day of trial. By that time appellants knew that the jurors were not being shadowed or tampered with by any other party.

It is most significant that the fact of all facts which appellants claim they were most eager to ascertain was considered of such little, trivial and insignificant import that it was not included in the carefully edited typewritten reports of the operatives. In editing and typing the daily handwritten reports for presentation to Day, all reference to the oft reported fact that no one else was trailing the jurors was deleted with

meticulous care. What, then, becomes of the contention of appellants that the sole object of the espionage was the protection of the jurors from tampering on the part of the Government or malevolent enemies of Sinclair; and that Sinclair and Day were most eager above all things to ascertain at the very inception of the Washington operation whether or not these jurors were in fact being followed.

In addition to the deletion of the important fact that the jury were not being shadowed, we have the further noteworthy fact that the "very bull-headed" juror Flora was never shadowed by the Burns operatives for an instant. Why is it that his home was never placed under surveillance? Why is it that he was not followed to his business appointments and his places of amusement? Why is it that his house was not visited? Why is it that his mortgages were not investigated, and why was he never subjected to the many other obnoxious features of this Washington operation?

What extraordinary divination enabled appellants to dispense with all espionage upon Flora? Why were not appellants apprehensive of the possibility of some malign enemy of Sinclair approaching this juror and corrupting him so as to prevent the possible acquittal of Sinclair? No possible ground for this exemption can be found in the contention of appellants that the jury were shadowed in order to prevent malign influences being brought to bear upon them. There is no answer for the deliberate withdrawal by

appellants of such protection for Flora save possibly this: The history attached to the jury list which counsel for Sinclair had in their possession at the time of the impaneling of the jury, and which Sinclair handed Day at the close of court on the first day of trial for the purpose of giving it to the Burns operatives, contained the very significant notation that Flora was a "very bull-headed" man. Flora was thus depicted as an obdurate and obstinate type, and for obvious reasons appellants wasted no time upon him.

What then was the real object and purpose underlying the Washington operation? The above mentioned facts and testimony disclose beyond all reasonable doubt that Sinclair did not have as his real object a simple scrutiny of the jurors. The Government charges, and the evidence convincingly substantiates the charge, that the jury espionage was carried on during the first week of trial for the purpose of making sure that the jury was not being shadowed by anyone else, so that appellants might thereafter carry on and accomplish with impunity their real object and purpose, to wit, the corruption of the jury, and in particular certain carefully chosen members thereof. **All doubt as to the alleged innocence and propriety of the surveillance is dispelled by the complete change in the character of the Washington operation during the second week of trial, which change is marked by a base and corrupt concentration of activities upon the three jurors Kidwell, Kern and Glasscock.**

Since the second day of the trial, Sinclair and Day had been studying with care and discussing each day the reports upon Kidwell, Kern and Glasscock. At the close of the first week of the trial, Sinclair is quoted by Day as saying that it would be a good idea "to find out if Kidwell and Kern were really substantial citizens" (R. 828). **It is uncontradicted that George P. Hoover, Esq., one of Sinclair's attorney's, had procured a descriptive list of the prospective jurors in order to assist him in the selection of a jury. This descriptive list gave full details as to the history of each juror. It therefore follows that Sinclair's attorneys knew full well the character of Kidwell, Kern and Glasscock at the time of their selection as jurors.**

Sinclair and his attorneys must have been fully satisfied with their characters at the time of the impanelling or else they would have challenged these jurors and not permitted them to remain in the jury box. Why should Sinclair suddenly, after a week of trial, begin to express agitation as to whether they were model subjects? The explanation of why the operatives suddenly concentrated upon Kidwell and Kern is highly improbable and ridiculously unplausible in view of their subsequent activities.

The descriptive jury list which Sinclair and his counsel had at the beginning of the trial and which was turned over to Ruddy by Day at Sinclair's direction, depicted Kidwell, Kern and Glasscock as follows:

Kidwell was described as a leather worker who

had been pretty wild as a boy "drinking and running around with rather a tough crowd" and who was still "a sport" although he had quieted down a little. Kern was listed as a bread wagon driver who was "quite a sport," who went to the races whenever he could, and who drank and took "a chance on any kind of a bet." Glasscock was described as a receiving clerk, living in extremely humble circumstances, who was "big, fat and lazy," who took "the easy side of life" and did "a lot of loose talking and cursing" and who had "no particular political or religious affiliations" and took "no pride in his personal appearance."

These descriptions of Kidwell, Kern and Glasscock afford abundant proof why appellants concentrated their efforts and activities upon these three jurors during the second week of trial. The three men were of lowly station and their background, their environment, their earning power and their personal shortcomings were such that they might prove easy prey to corruption.

Appellants had known for a week that the jurors were not being shadowed by government agents or by anyone else. An excellent opportunity was thus afforded to appellants to concentrate their efforts upon these three jurors with impunity. As a preliminary step, Ruddy proceeded to Philadelphia in order to connect "with other phases of the case." Just what these phases were is not disclosed in the record. One thing is certain, however, this trip was in no wise

connected with the fictitious purpose which appellants claim was behind the surveillance, namely, the ascertainment of whether or not anyone else was shadowing the jurors or endeavoring to tamper with them.

The first step in the concentration upon Kidwell was an effort to ascertain his views as to the trial. Day had heard that Kidwell had a brother who was a barber and expressing the opinion that all barbers were very garrulous, he requested Ruddy to have the brother shadowed. Ruddy detailed O'Reilly for the investigation.

Under the guise of a representative of the Health Department of the District of Columbia, O'Reilly proceeded directly to the home of juror Kidwell at 1637 U Street, S. E., and there talked with the juror's mother. The time of his visit is fixed at approximately 4.30 or 5 o'clock P. M., at which time it was reasonable to assume that juror Kidwell would not be in attendance in court since its daily sessions ordinarily concluded at about 3.30 in the afternoon.

Having ascertained from the mother the address of the Kidwell barber shop, O'Reilly proceeded directly to the Myrtle Hotel, where it was located and which O'Reilly knew was reputed to be "a sporting house." Upon arrival there, he entered the barber shop, and, using a suitable pretext, engaged the father of juror Kidwell in conversation, making some inquiry about a fictitious person by the name of Stewart. The report of O'Reilly on this visit not only

describes the Myrtle Hotel as one of ill-repute, but also contains the statement that racing slips were found in the back of the premises.

If we take at its face value Day's explanation of the occasion for O'Reilly's mission, it is manifest that the most vicious of criminal contempts was thereby committed. Day said, in effect, that barbers are very garrulous people and talk quite a bit and that therefore he wished to know whether the barber relative of juror Kidwell was talking promiscuously about the trial or in any way expressing "anybody's ideas about the trial" in the hearing of customers in the shop. **This confessedly amounts to a direct effort on the part of an agent of a defendant in a criminal case to ascertain, while such case is in progress, the sentiments of a juror sitting in that case as reflected in the casual utterances of a relative of said juror.**

No feature of our criminal procedure is stressed more emphatically or has a sounder foundation in reason, logic and experience than that of cloaking in impenetrable silence the sentiments, views and reactions of a juror from the time the case is first entrusted to him until the verdict is rendered. This is too elemental to admit of extended discussion. No one may speak to a juror with regard to the case. The juror may not express his views during the pendency of the case. The trial judge so warned the jury at the close of court on the first day of the trial.

Even on occasions when a jury is in apparent dis-

agreement and comes in for instructions or enlightenment, the court is always most careful to instruct the jury that while it is willing and eager to give them any assistance that might be required in any matter of law pertaining to the case, yet they must be most careful in putting their questions to the court to refrain from indicating in the slightest degree whatever any attitude they or any of them may have taken on the facts involved or the ultimate issue.

It is further inconceivable that there should be any serious argument on the question whether it is contempt for a private detective in the employ of a defendant in a criminal case to visit the home of a juror. A transaction of that character presents a serious affront to the dignity of the court. The machinery of our criminal law would fall and eventually collapse, if a court would give sanction to the proposition that private detectives employed by a defendant might visit the homes of jurors with impunity. A practice of this character contains so many implications of grave import to our judicial system that its inherent viciousness is manifest.

Appellants endeavored to show that O'Reilly did not know he was visiting the home of juror Kidwell, when he went to 1637 U Street, S. E. O'Reilly testified that he looked through the Washington City Directory for Kidwells living in Anacostia, the section of Washington in which he was directed by Ruddy to start his investigation; and that he found many Kidwells living in that part of the city. He

further testified that when he went directly to the above address he did not realize that was the home of juror Kidwell.

If O'Reilly did not know that he was going to the home of juror Kidwell, is it not uncanny that this home was the only Kidwell home visited by him. But the oral testimony of O'Reilly is convincingly refuted by his daily handwritten report of October 24, 1927 (R. 163). That report begins with the statement that O'Reilly made an investigation of juror Kidwell's brother under instructions received from Ruddy; and then come these significant words: "I went to the residence as given, after being unable to obtain any information nearby the house." Of course Ruddy had the correct address of juror Kidwell inasmuch as he had in his possession the descriptive list of jurors that Day had handed him at the commencement of the operation. That descriptive list bore the full name of juror Kidwell and his correct street address.

It is inconceivable that O'Reilly did not know the home address of juror Kidwell. Each day he had collected the daily handwritten reports showing the activities of the Burns operatives in the vicinity of that address. These reports told in detail various incidents occurring in Kidwell's immediate neighborhood; and embraced, *inter alia*, the narrow escape of operative Merritt from arrest in that vicinity by a police sergeant by reason of his apparently aimless loitering.

That the visit of O'Reilly to the home of juror Kidwell was not the innocent transaction that appellants claim is made manifest by the following significant words in O'Reilly's report of October 24, namely, "the brother of #5 in whom we are interested * * *."

The record disclosed that juror Kidwell returned to his home that evening at 6 o'clock, at which time his mother reported to him the visit of O'Reilly. Later in the evening, the mother again related the O'Reilly visit to the father in the presence of juror Kidwell. Would the enormity of this visit been aggravated had juror Kidwell been at home when O'Reilly came to the house under the guise of an employee of the District of Columbia? O'Reilly and his superiors must have realized that a visit at that hour of day might reasonably expect to find the juror at his home. More than an hour had elapsed since court had adjourned for the day.

Nevertheless, O'Reilly proceeded to the home of juror Kidwell, despite the danger of a possible encounter with him. If, in truth, he missed this juror, it does not abate in the slightest degree the depravity of his conduct and the conduct of those who sent him. If such a visit is not contempt, then the courts of this land must lend their approval to a practice inherently vicious and essentially inimical to the soundness of criminal administration.

According to O'Reilly's hand written report upon the conclusion of his conversation with the mother of

juror Kidwell, O'Reilly visited the barber shop of Kidwell's father and, using a suitable pretext, accosted him and asked him some questions about a fictitious person. It is reasonable to assume that the statement in O'Reilly's report that the barber shop was located in a hotel of ill-repute may be considered as a reference to facts which might lead his superiors to believe that the character of juror Kidwell and of his family might be such that a fertile field was readily available for the sowing of the seeds of corruption.

That the foregoing visit was considered important appears from the subsequent conduct of O'Reilly. Instead of merely filing next day a hand written report covering the visit, O'Reilly hurried back to the Wardman Park Hotel that evening and there reported verbally to his chief, Ruddy, in the presence of Day. The latter was standing within four or five feet of O'Reilly, while the visit was being narrated to Ruddy. Day testified that he overheard practically none of the conversation between Ruddy and O'Reilly (R. 829). It is significant, though, that that portion of the conversation which Day did hear was that "it was a disreputable barber shop up on a hill in a disreputable hotel" (R. 829). It is further significant that Day happened to be in that room on the return of O'Reilly for the purpose of making an unusual oral report to his chief.

In view of all the circumstances attendant upon O'Reilly's visit to the home of juror Kidwell and

the barber shop of his father, the government cannot accept the ingenious but incredible explanation thereof by Day. When a defendant of the power and wealth of Sinclair is on trial, facing the possibility of two years incarceration in the penitentiary, when private detectives in his employ are conducting malevolent espionage, when there is a juror who is described as "a sport," who has been pretty wild and has drunk and run around with rather a tough crowd in his youth, what is the only reasonable, intelligent and obvious inference that any man can draw from such a visit?

Only this inference is probable and reasonable, namely, that the visit was preliminary to and a part of a direct effort by a defendant on trial to reach that juror, to buy him, to bribe him, to corrupt him and to fix him so that the defendant might escape risk of imprisonment. This conclusion becomes even more irresistible in view of the testimony that (1) something had gone wrong in the trial and it looked very bad for Sinclair, (2) Sinclair had $200,000 to spend on the jury, and (3) Sinclair was going to "spend plenty of money to get out of this as he had to" (R. 618-20).

Equally sinister and venal are the activities of Day and the Burns operatives in investigating the financial responsibility of juror Kern and the encumbrances upon his home. The description which appellants and their counsel had of Kern at the inception of the trial revealed that he was a sport

who went to the races whenever he could and took a chance on any kind of a bet. Obviously such a man was not to be expected to meet his financial obligations on the meagre salary of a bread wagon driver.

Day testified that he believed that juror Kern was irresponsible and that he was most anxious to find out if there were any encumbrances on his property. This anxiety manifested itself during the first week of trial when Day asked a friend in the real estate business how to look up a mortgage. So anxious was Day to discover the irresponsibility of Kern that he not only arranged to have the Burns operatives investigate the encumbrances on Kern's home and the identity of the parties holding the same, but also he himself went to the real estate office of Hagner and Company and thereby ascertained that there was a substantial mortgage on the house of juror Kern which was held by a building and loan association.

The investigation of juror Kern did not rest with the discovery of this encumbrance. Two Burns operatives were detailed to trail his brother and, in addition thereto, an operative was placed on the trail of Vogt, his next door neighbor, who was a reputed petty grafter.

The sinister possibilities that beset a secret investigation during a trial into the financial obligations of an admittedly gaming juror of straitened circumstances are too many and too dangerous to admit of their countenance for a moment by a criminal court.

Likewise, the usage to which the information thus disclosed could be put by one with corrupt intent is too manifold and apparent to admit of discussion. One wonders, however, whether the encumbrance on the home of juror Kern played any part in the "something" that Ruddy promised "was going to break in the case over the weekend" of October 29th. The record contains the significant statement that appellants wished to ascertain if any encumbrances had been recently paid off on behalf of Kern. This indicates that they considered him corruptible.

Early in the trial, steps were taken to frame juror Glasscock in order to procure possible material for a mistrial or a new trial, if appellants should later find either contingency necessary. The trial judge had carefully charged the jury on the opening day of trial that they should not talk about the case nor should they read newspaper accounts thereof. Pursuant to instructions from Ruddy, McMullin on the third day of trial embodied in his daily report a false statement that juror Glasscock had purchased and read a newspaper intently during the noon recess that day.

Two days later Ruddy came to McMullin's hotel room and told him that "something had gone wrong in the case the day before" and that "it looked very bad for Sinclair." He thereupon gave McMullin an automobile license number and directed him to put the driver of an Oakland roadster with that license number in conversation with juror Glasscock at the Potomac Flying Field. Such a spurious meeting

was reported in McMullin's daily report for that day as having taken place at the Potomac Flying Field that afternoon.

The falsity of the report is now freely admitted by appellants. In addition, the testimony of juror Glasscock, of Mr. Lamb, Special Assistant to the Attorney General, who is the owner of the car bearing that license number, and of the garage man all bore uncontradicted witness to the falsity of the report.

Apparently it was not the intention of appellants to make use of these fabricated reports unless it became necessary to do so; in which event they were to be used as the basis for a mistrial or a new trial. Appellants were prevented from so using the fabricated reports by the unexpected government search of the headquarters of the Burns operatives at the Wardman Park Hotel on the morning of October 31st and the seizure of their reports and other documents.

But this capture afforded a new use for the spurious meeting of juror Glasscock with Mr. Lamb at the Potomac Flying Field on the afternoon of October 22nd. It afforded a ready basis for the false newspaper statement by William J. Burns that the only tampering with the jury was attributable to agents of the Government. This false statement was used to divert the unfavorable newspaper publicity from which the Burns Agency suffered after the declaration of the mistrial. It was also used

in an unsuccessful attempt to influence the trial judge and mislead him into believing that the Burns operatives and appellants were not chargeable with contemptuous conduct. We shall deal fully in the following section of this brief with the subsequent filing of false affidavits on behalf of William J. Burns to this end.

The framing of juror Glasscock has a further malign significance. The daily reports of the Burns operatives disclosed that Glasscock was in touch with his reputed friend Burr. Immediately thereafter, a Burns operative was instructed to ascertain if Burr had loose morals and if "he was capable of playing with a juror or approaching a juror." At the time this information was sought, appellants, of course, knew that the jury was not being shadowed or approached by anyone else. Strenuous efforts were made to get in touch with Burr; and not only were Burr and his wife called by telephone at his home but the cultivation of an acquaintance with a third party named Simmons was attempted as a possible avenue of approach to Burr through his business connections.

The foregoing concentration of activities upon those three jurors whose background, environment and habits were such that they might prove easy prey to those seeking to corrupt them disproves the contention of appellants that the espionage was solely for the purpose of ascertaining whether anyone else was following or tampering with the jury. As to

such a contention they had their answer in the negative a day or two after the beginning of the espionage. What, then, becomes of the contention of appellants that the present case is but one of surveillance.

It was not simple surveillance when O'Reilly went to Kidwell's house; nor was it simple surveillance when O'Reilly went from there to the disreputable barber shop of Kidwell's father. It was not simple surveillance when Day went to Hagner and Company to find out about the mortgage; nor was it simple surveillance when O'Reilly went to the Recorder of Deeds in the District Building to ascertain the encumbrances on Kern's house. It was not simple surveillance when operatives scoured the neighborhood of Kern's home in search of information and trailed his brother and his next door neighbor Vogt. It was not simple surveillance when Ruddy instructed McMullin to frame juror Glasscock on two separate occasions; nor was it simple surveillance when operatives endeavored to get in touch directly and indirectly with Burr and to ascertain if he was susceptible of playing with a juror or approaching a juror.

All of the above activities of the Burns operatives during their week of concentration on jurors Kidwell, Kern and Glasscock disclose that the appellants, having first ascertained for a certainty that the jury was not being shadowed by anyone else, thereupon proceeded to work upon these three jurors in a manner that leaves no doubt but that their final object

and purpose was to corrupt them and to make them amenable to the sinister and venal aims of Sinclair. It is not surprising that appellants seek to divert attention from these activities and thus escape criminal responsibility for their actions by constantly reiterating there was no contact with any juror and therefore the reasonable tendency of such activities are to be disregarded.

This Court is now faced with the same problem that faced the court below, namely, whether or not it can give and will give its approbation to activities and transactions such as these. Before such approbation can be given, this Court must first find that (1) espionage upon a jury is lawful, even though it ranges over every moment of a juror's waking hours and carries with it the constant threat of disclosure and the resultant disturbance of the serenity of his mind and his freedom from distraction which are the essential privileges of a juror; (2) the home of a juror may be visited with impunity by private detectives in the employment of a defendant in a criminal case; (3) efforts may be made with impunity by private detectives in the employment of a defendant in a criminal case to ascertain the sentiments of a juror during the trial; (4) the private and financial affairs of a juror may be investigated with impunity by private detectives in the employment of a defendant in a criminal case, while that juror is sitting; (5) friends of a juror may be approached with impunity in an effort to learn whether they have

loose morals and are susceptible of approaching the juror and (6) grave misconduct on the part of a juror may be fabricated with impunity in order to provide possible material for a mistrial or a new trial.

The government submits that if this Court and the other courts of the United States should for even a moment lend their approval to these activities, there would necessarily be injected into our system of law administration such sinister and venal practices that the sanctity and sturdiness of our institutions would at once be imperilled, if not destroyed.

In considering whether the facts in the present case constitute contempt, it is important to bear in mind the fact that the jury is as integral a part of the court as the presiding judge and that it is entitled to just as much protection as the judge. This was expressly recognized by the Court of Appeals for the District of Columbia in the case of **McCaully v. United States, 25 App. D. C. 404 (1905)**, wherein it is said (p. 414):

> "* * * **Every juror is part of the court wherever he is.** Under our common law the jury is as much a part of what may be designated as the machinery of the administration of justice as is the judge, and a corrupt attempt to influence the jury, or any individual member of it, is an offense differing only in degree from a similar attempt to corrupt the judge. **Judge and jury are component parts of the court.** An attempt upon the integrity of the jury, or upon the integrity of any indi-

vidual juror, is a direct attack upon the court; and the court is entitled to protect itself from all such attacks by the methods which the common law has established for the purpose, namely, by the way of summary proceedings for contempt of court.

"Now, if it be true, as it seems to us to be, that an attack upon the integrity of an individual juror is an attack upon the integrity of the body to which he belongs—for it only requires the corruption of one to destroy the efficiency of the whole—and such attack therefore is a direct attack upon the court, how can it reasonably be argued that the act has not been done in the presence of the court? We scarcely know how it could come nearer home to being an obstruction to the administration of justice."

For the purposes of the present argument, let it be assumed for the nonce that the acts complained of in this case were directed towards the presiding judge instead of the jury.

Would it not be contemptuous, if private detectives got the judge up in the morning and put him to bed at night? Would it not be contempt of court, if every time the judge boarded a street car a private detective was with him? Would it not be contempt of court, if the neighborhood of the judge's home was constantly patrolled by an agent or agents of a defendant in a criminal case wherein the judge was sitting? Would it not be contempt of court, if the mortgages on a judge's home were investigated by private detectives during the pendency of a case?

Would it not be contempt of court, if efforts were made to ascertain the sentiments of a judge regarding a case before he had rendered his opinion? Would it not be contempt of court, if the neighborhood of the judge's home were raked as to the habits and susceptibility of his friends to receiving graft? Would it not be contempt of court, if the judge's wife or sons or daughters were trailed by agents of a defendant during the pendency of a case in which he was sitting? Would it not be contempt of court, if the espionage began in the very court room and the judge became aware of the vicious surveillance?

Would not the foregoing activities have a reasonable tendency to obstruct justice and to interfere with his free and unfettered disposal of the case on its merits and under the law? If these things were done to a presiding judge, surely that would constitute contempt. Jurors are entitled to the same protection as the judge. Therefore, if such activities would constitute contempt in the case of a judge, surely they would likewise constitute contempt in the case of a jury.

Under the law of criminal contempt as declared by this Court, it is not necessary that the jury should realize the espionage in order to convict appellants of criminal contempt. This is the doctrine laid down in the case of

Toledo Newspaper Co. et al. v. United States 247 U. S. 402 (1918).

The facts and decision have been previously stated at pages 45-47 of this brief. The opinion by Chief Justice White carefully points out that the defamatory publications had never reached the eyes or the attention of the trial judge nor had the defamatory newspapers ever been circulated in the court room. There was a complete absence of proof that the judge was ever cognizant of the contemptuous publication.

However, in the present case, there are many facts which would indicate beyond any doubt that the espionage had penetrated the consciousness of the jurors. Juror Kidwell testified without contradiction that a number of jurors, including Herzog, Holmes and Kern had discussed the subject of shadowing in the jury consultation room, while the jury had been sent out from the court room during an argument on a question of law. The two women members of the jury, Mrs. Bailey and Miss Heaton, were also present during the discussion.

This discussion, which lasted five or ten minutes, indicates that the jurors were conscious of the fact that some surveillance was going on. Surely such a discussion indicates that they knew there was something mysterious and intangible surrounding them. It further indicates that appellants were bringing by their espionage a distraction into the minds of the jurors that interfered with the proper, fair and decent administration of justice.

Even though the law does not require the government to show that the espionage by appellants regis-

tered on the minds of the jurors, still this discussion is now presented to this Court for the express purpose of showing that the Washington operation did penetrate their consciousness and did actually obstruct justice in this case.

If a juror is discussing being shadowed in the middle of the case his mind is not the mind that the law contemplates when he is put on the jury to try well and truly a certain case. That mind has been subjected to a distraction which interferes, impedes and distracts him in carrying out the duty the law requires him to fulfill.

The law imposes, as a cardinal principle, the proposition that where a man is sworn to try well and truly the issues in a case he must try the case on the facts as produced on the witness stand and according to the law as its comes from the lips of the judge on the bench. He will not be able to try well and truly that case if he feels that someone is subjecting him to a close, intimate and objectionable surveillance. He can not try well and truly that case in the unfettered and untrammeled manner that the law demands if he is conscious of such an espionage.

The law does not contemplate that the case shall be tried in that fashion. The law does not admit of a jury being subject to such obnoxious distractions. The law does require that the case shall be tried free of all obstructions and all distractions which may be calculated to interfere for a moment with the pure and unsullied administration of justice.

Juror Herzog testified in answer to the question whether or not he was aware of being followed, that while not aware, he had a suspicion thereof. He further testified that while driving home from court one day he noticed a car which he believed was following him. The car turned into the street where Herzog lived and parked on the side opposite Herzog's home. Herzog thereafter looked out of the window to see if the car was still there. Why was he doing that unless there was passing through his mind at the time of the trial a conviction or suspicion that he was being shadowed?

Furthermore, juror Herzog told on the stand about a man he observed hanging around outside of his place of business; and that subsequently, after the revelation of the shadowing operation, he saw operative O'Reilly and thought that O'Reilly was the man he saw hanging about at that time.

Why was Herzog noticing people hanging around his place? Why was it that Herzog was watching to see if cars were following him or was observing cars that stopped in front of his house? Why were jurors engaging in a conversation with other jurors with regard to shadowing unless they had some reason to know that they were being followed? This espionage had registered on their consciousness, and having registered, was inevitably impeding them in the discharge of their duties as jurors.

This uneasiness and suspicion on the part of juror Herzog is further evidenced by an episode reported by operative Knowles on October 24, 1927. That

episode disclosed that Herzog and his companion were suspicious of Knowles who was parked in a car in their immediate vicinity and that the companion was so aroused that he left Herzog and passed by operative Knowles twice observing him closely and scrutinizing him suspiciously.

Assembling the various facts with regard to Herzog, the conclusion is inescapable that this harassing, vicious, obnoxious espionage was forcing into the mind of this juror an uneasiness and a suspicion that the law does not countenance.

Kidwell testified that he saw a man whom he subsequently recognized as operative Merritt board the same street car on which Kidwell was riding during the course of the trial. He also told of seeing agent Klein enter a near-beer saloon as he was leaving it; and that he kept Klein under observation as Klein crossed the street and up until the time that Klein passed out of sight.

It matters nothing whether or not juror Kidwell knew that the Burns operatives were following him. It matters nothing whether or not he knew that detectives in the employ of appellants were following him. It does matter greatly, however, that a juror had noticed the presence of these two men during the course of the trial who were subsequently identified as Burns operatives. It demonstrates that another juror was conscious of the espionage. It shows that another juror was subjected to these distractions which the law demands he should not be required to suffer or endure.

Juror Kidwell, after he had been accosted in Judiciary Square by some mysterious stranger who sought his assistance in getting into the court room and who made inquiry as to what the juror thought of the trial, came into the jury room in the court house where he encountered Mrs. Bailey and Miss Heaton, two of the jurors. The conversation between the three was not related on the witness stand, but there did get into evidence a statement by Kidwell that a conversation was had between them upon the subject of coming into the court house for the purpose of keeping out of trouble.

Operative O'Neill relates in his daily report that juror Goucher acted in such a manner on Sunday, October 23rd, as to disclose that Goucher was cognizant of the espionage. O'Neill felt so perturbed about the espionage that he called up O'Reilly to advise him of the probability that juror Goucher had detected the surveillance. O'Reilly directed O'Neill to resume the trailing and do the best that he could under the circumstances.

Despite the assertions by appellants that the Burns operatives were instructed not to bother or to accost jurors and that they were directed to desist from the shadowing if the jurors became conscious of the fact, yet it is noteworthy that O'Neill was not relieved from the duty of shadowing juror Goucher, even after this occurrence.

The foregoing episodes clearly establish that the espionage had penetrated the consciousness of the jurors and had disturbed their serenity of mind in a

manner not contemplated by the law. Although such realization of the espionage by the juror was not necessary under the decision of this Court in the Toledo case, *supra*, yet it is but another factor justifying the conviction of appellants upon the charge of criminal contempt.

In conclusion we submit that the activities of the Burns operatives during their two weeks of espionage upon the jury disclosed beyond peradventure that their activities were highly improper in object and were aimed to corrupt the jury; and that such activities not only reasonably tended to obstruct justice, but did in fact, as found by the trial judge, obstruct the trial of the Sinclair-Fall conspiracy case and largely cause its abrupt termination in a mistrial on November 2, 1927. We further submit that the jury espionage had penetrated the consciousness of the jurors and thereby tended to impede and interrupt the free and untrammeled discharge of their important functions as triers of fact.

C. Complicity of William J. Burns in the criminal contempt.

In the separate brief filed on behalf of William J. Burns, it is argued that there is no evidence to support his conviction of criminal contempt. This argument is based upon the alleged lack of any proof that Burns had any knowledge of or connection with (1) the jury espionage and (2) the procurement and submission of the false McMullin affidavit. This necessitates a review of all the evidence showing his connection with the Washington operation.

The contention that Burns had no knowledge of or connection with the jury espionage is based upon his testimony that his first knowledge thereof was on November 1, 1927, when a New York newspaper man telephoned to ask him for a statement regarding the Washington operation. This testimony, however, need not be accepted at its face value, since the record contained other testimony that justified the fact inference that Burns and Sinclair had met in advance of trial and arranged for the possible espionage upon the jury.

Furthermore, his actions, utterances and attitude after the mistrial all point to his consciousness of guilt. These actions, utterances and attitude will hereafter be fully considered in our discussion of his knowledge and connection with the procurement and filing of the false McMullin affidavit.

The record disclosed that William J. Burns came to Washington on October 12th and left on October

13th. He accounted fully for his time on the 12th and on the morning of the 13th; but carefully concealed his activities during the remainder of that day. He did let drop the fact that he could be reached at the Washington office of the Burns Agency during the remaining portion of the day.

Burns was thus free for half a day to meet his old client, Sinclair, who had come to Washington on October 10th and was spending the whole week there preparing for the approaching trial of the Sinclair-Fall conspiracy case. That Burns and Sinclair must have availed themselves of the opportunity so to meet readily appears from the subsequent manner and method of the employment of the Burns Agency for the espionage.

When the Burns Agency was employed on October 18th to espy upon the jury, this employment was accomplished by extremely brief and closely guarded long-distance telephone conversations, in which neither the name of the case nor the word "jury" was used. The employment was effected through Day and not Sinclair. The telephone conversations were put through to private residences, whenever possible; and the meeting between Day and Ruddy was likewise at a private residence.

In view of the brevity and reserve of the conversations by telephone and in person, and in view of the fact that Day was at all times an unknown person to the Burns Agency, it is more than a fair fact inference that there must have been some prior

arrangement about bringing the Burns operatives to Washington. In view of the further fact that Burns and his old client Sinclair were in Washington just before the trial, and in view of the failure of Burns to account for more than a portion of his time, the conclusion is irresistible that the pre-arrangement must have been between Burns and Sinclair.

There is direct and convincing proof that Burns had full knowledge of and was directly connected with the filing of the false McMullin affidavit after the declaration of the mistrial on November 2, 1927.

On that day William J. Burns personally telephoned his Washington attorney, Thomas Lodge, in order to avert the notoriety regarding the Burns Agency that was then emanating from the Grand Jury proceedings in Washington. The next evening Mr. Lodge was present in the room of Ruddy at the Wardman Park Hotel and assisted in the preparation on that occasion of the false McMullin affidavit. The following morning, November 4th, Mr. Lodge proceeded to the chambers of Justice Siddons and handed him the McMullin affidavit. Mr. Lodge then and there stated that he represented the Burns people and was presenting the affidavit on their behalf. He also made use of the name of William J. Burns in that connection, and told Justice Siddons that the affidavits were for his information.

On the evening of November 5, 1927, William J. Burns conferred with W. Sherman Burns and Ruddy

in New York City about the Washington operation generally.

After Burns had appeared before the Grand Jury in Washington on November 8th, he conversed with a group of newspaper men standing in the hall outside and told them that he had filed with Justice Siddons two affidavits disclosing that the Government had been guilty of the only jury tampering. That same day Burns went to the Union Station in Washington in order to meet McMullin who was returning from Philadelphia. During the course of that day Burns told McMullin to stick to his false story regarding the meeting of juror Glasscock and Mr. Lamb at the Potomac Flying Field and he "would be well taken care of."

After McMullin had appeared before the Grand Jury on November 9th Burns again assured McMullin that he would be well taken care of and instructed him to go out to the Potomac Flying Field and look over the lay of the land. He also instructed McMullin to get a look at Lamb's automobile. McMullin testified that at the time of the preparation and execution of his false affidavit Ruddy told him that William J. Burns wanted the affidavit made for the client, and that it would be pretty bad for McMullin if he did not go through with it.

The foregoing testimony is more than ample to show the complicity of William J. Burns in the preparation and filing of the false McMullin affidavit and to support his conviction for criminal con-

tempt. That portion of the testimony which is based on the disinterested sworn statements of the secretary to Justice Siddons, and of the two newspaper men, is not in dispute and its credibility is not attacked by counsel for William J. Burns. The balance of the testimony, which depends upon the credibility of Government witness McMullin, is strenuously attacked in the separate brief for William J. Burns.

The attack upon the credibility and veracity of McMullin's testimony is based entirely upon his prior criminal record. The Government freely admits that McMullin procured employment with the Philadelphia office of the Burns Agency by using a false name, and that he was convicted of passing a bad check for which he served time in an Ohio penitentiary. Despite this bad record the fact remains that when it came to betraying his Government McMullin balked and disclosed to Government counsel the activities of the Burns operatives, thereby preventing the corruption of the jury. The facts that he disclosed to Government counsel in this regard were subsequently proved in every detail by the reports and documents seized by the Government under the search warrant.

We desire to call attention at this point to a specious argument that is advanced by counsel for appellants with reference to McMullin's disclosures to Special Counsel for the United States prior to the issuance of the search warrant and the seizure of the records and documents of the Burns operatives

on October 31, 1927. Counsel argue that the jury espionage was innocent and proper because Special Counsel for the United States acquiesced in and tacitly approved of the activities of the Burns operatives for a week or ten days before taking any action thereon.

This argument misapprehends the purpose underlying the apparent inactivity of Government counsel. They were deeply perturbed by the information brought to them by McMullin at the close of the first week of trial and were greatly troubled over the corrupting possibilities of the surveillance. After due deliberation they concluded that the information disclosed by McMullin did not warrant Special Counsel in forcing a mistrial at that stage, but that they should await developments and first learn just what turn the surveillance might take.

To that end, they requested McMullin to remain at his duties under the Washington operation and to advise Special Counsel, if possible without detection, as to the further activities of the Burns operatives. When advised by McMullin of the concentration upon jurors Kidwell, Kern and Glasscock and of the activities of the Burns operatives in connection therewith, Special Counsel at once realized that such action could have for its sole purpose the corruption of the jury and, in particular, the three members just named. The time for summary action had arrived; and consequently a search warrant was issued and the records and documents of the Wash-

ington operation were seized. Thereupon, Special Counsel submitted to the trial judge affidavits regarding the activities of the Burns operatives; and the following day a mistrial was declared.

It is thus manifest that Special Counsel in no wise gave their approbation to the jury espionage. On the contrary, as soon as the appellants disclosed their hand and the corrupt character of the espionage was unmistakably revealed, Special Counsel acted promptly and thereby prevented the successful completion by appellants of their sinister efforts to bring about a miscarriage of justice.

Returning now to the credibility and veracity of McMullin's testimony, it is apparent that we have in McMullin the example of a man with a bad record who "came clean" and told the truth to Government counsel when he realized that his country was being betrayed. His credibility must of course largely depend upon his manner of testifying on the witness stand. This is a matter peculiarly within the knowledge of the trial judge; and his confidence in the veracity of McMullin's testimony should not be lightly set aside on appeal. Moreover, his findings of fact based upon McMullin's testimony are conclusive, if sustained by substantial evidence, as they are.

There are certain other factors in the present case that support the truthfulness of his testimony. Burns undoubtedly knew of the spurious character of the McMullin affidavit. It is not reasonable or plausible to assume that the former head of the

Bureau of Investigation of the Department of Justice would believe that a Special Assistant to the Attorney General of the United States would be going to a flying field outside the District of Columbia to meet a juror in any case.

However, the servants of William J. Burns had gone too far in the matter of concocting material for a mistrial or a new trial. Such fabricated material had been seized by the Government under the search warrant; but Burns saw in the spurious McMullin report of October 22, 1927, material for a countercharge which would divert the public gaze from the iniquitous practices of the Burns operatives and fasten public attention on what apparently was a performance on the part of the Government far more sinister than the espionage his operatives admitted. The opportunity thus presented was too strong to resist.

Further evidence of Burns' knowledge of the falsity of the McMullin affidavit is found in the manner of its presentation to the court and the motive that underlay such presentation.

The spurious affidavits were not filed by Daniel Thew Wright, Esq., counsel for Day, although Wright had largely prepared them the previous evening. They were not filed by counsel for Sinclair. Instead they were filed by Thomas Lodge, the personal attorney of William J. Burns and with whom Burns had recently talked about averting the undesirable publicity that followed the mistrial.

Furthermore, the spurious affidavits were not brought to the attention of the United States Attorney nor to the Chief Justice of the Supreme Court of the District of Columbia. This would have been the normal procedure and must have been known to Mr. Lodge, a former Assistant United States Attorney. A most anomalous procedure was followed. On November 4th Mr. Lodge handed the affidavits to Justice Siddons in chambers. The mistrial in the Sinclair-Fall conspiracy case had been declared by Justice Siddons on November 2nd; and he was obviously occupied at the time with considering what appropriate action should be taken with reference to the activities and practices that had been disclosed in the affidavits upon which he had relied in discharging the jury and terminating the trial.

What were the motives that underlay the filing by William J. Burns of the spurious affidavits with Justice Siddons? It was primarily the desire to halt if possible the unfavorable newspaper publicity which the Burns Agency was then enjoying. The agency bearing his name had carried on a jury espionage which was largely responsible for the disgraceful mistrial of one of the leading criminal causes of the day. The activities of that agency were being flaunted in public print to such an extent that Burns most obviously was feeling the pinch of such undesirable notoriety.

Besides, W. Sherman Burns, the son of William J. Burns and the secretary and treasurer of the

agency, had confessedly sent these operatives to Washington. It was impossible to assume that W. Sherman Burns would escape prosecution for his part in the plan; and possibly William J. Burns might become involved in the same prosecution. If, however, a counter-attack could be launched making it appear that the Government had transgressed even more so than the Burns operatives, then the Burnses would be in a more favorable position to defend themselves.

Burns was also deeply interested from a monetary point of view in extricating the Burns Agency from its unenviable plight. Ninety-four per cent. of its capital stock then stood in the name of his wife and the remaining six per cent. was owned by his sister and son. Such ownership shows that Burns had a very definite and specific monetary reason for his attempt to smudge the issue and tar the Government with the same brush with which the agency bearing his name was being smeared.

His eager and truculent statements both in the newspapers and to the reporters, that the Government had been guilty of the only jury tampering, were not the statements of one interested in the truth, but were rather the desperate words of one striving to extricate himself from a most trying and difficult situation. They are in keeping with the lavish attention shown McMullin by Burns upon his arrival in Washington later that day.

This lowly private detective, McMullin, was personally met at the Union Station in Washington by

William J. Burns and W. Sherman Burns. They put him into a cab and brought him to the law offices of Mr. Lodge. The chief topic of conversation, both at the station, in the cab and at the office of Mr. Lodge, was the flying field episode. When met at the station McMullin was told by William J. Burns to stick to his story and "I will take care of you." This assurance was repeated again and again.

Why was all this attention on the part of William J. Burns and W. Sherman Burns, and others, lavished upon a humble private detective, and why was the conversation practically confined to the flying field affair unless William J. Burns was preparing McMullin to bear up under investigation and adhere to his fictitious yarn. This is perhaps best indicated by his answer to McMullin's fears over not being able to identify Mr. Lamb. Burns told McMullin that he need not worry since his report of October 22, 1927, did not purport to describe Mr. Lamb but merely gave the number of his automobile.

Further evidence of the attempt of William J. Burns to bolster up the false report of McMullin is furnished by his instructions to McMullin, after the latter had appeared before the Grand Jury. After again assuring McMullin that he would be well taken care of, Burns instructed McMullin to return to Washington and to go out to the Potomac Flying Field in order to look over the lay of the land. He also directed McMullin to get a look at Lamb's automobile.

William J. Burns admitted that he told McMullin to go to the Potomac Flying Field and look it over, but, as Burns contends, for the purpose of locating someone who could identify McMullin as having been there on the afternoon of October 22nd. He did not deny, however, that he had given instructions to McMullin regarding the identification of Lamb's automobile.

The above mentioned evidence is more than adequate to support the finding of the trial judge that William J. Burns was implicated in the criminal contempt and to sustain his conviction therefor. In this regard it should be noted that an appellate court does not consider the weight of the evidence but simply ascertains whether the findings of fact are supported by any competent evidence and whether these evidentiary facts had any reasonable tendency to sustain the conclusion of guilt there under. This was held not only in the Toledo case *supra*, but also in the cases of **Tjosevig v. United States, 255 Fed. 5 (1919) (C. C. A. 9); Stewart v. United States, 236 Fed. 838 (1916) (C. C. A. 8); Binkley v. United States, 282 Fed. 244 (1922) (C. C. A. 8); and Kelton v. United States, 294 Fed. 491 (1923) (C. C. A. 3).**

The suggestion has been made by counsel for William J. Burns that his client was not on trial at the time the false affidavits were filed and had no interest of any kind or character to subserve which would induce him to have deposited such spurious papers with the trial judge; and that justice was in no way obstructed or impeded by the filing of

the false McMullin affidavit. We have previously pointed out that William J. Burns was not the disinterested and detached party that his counsel would have this Court believe. There were several matters pending before the court at that time that were susceptible of being obstructed by the filing of the false affidavits.

There were before the trial court: first, the Sinclair-Fall conspiracy case which still remains on the docket at this time insofar as the defendant Fall is concerned; second, the grand jury investigation into the jury espionage conducted by the Burns Agency, such proceedings being conducted, of course, on behalf of the Supreme Court of the District of Columbia; and third, the fact that the Sinclair-Fall conspiracy case had resulted in a mistrial, largely due to the jury espionage so that the Supreme Court of the District of Columbia was at that time faced with the necessity of taking appropriate measures in the premises to safeguard and protect its dignity.

Even though the false affidavits failed of their object, they were nevertheless intended to obstruct and impede the foregoing court proceedings; and the law is clear that the submission of a spurious affidavit constitutes contempt, regardless of its success or failure. The court will not permit itself to be made the butt for every wilful kind of misrepresentation. The wilful filing of a false affidavit before any court at any time is contemptuous to that court and is most strongly subversive of its dignity.

This principle of law of criminal contempt is so well established that it is hardly necessary to do more than refer to the leading case of

In re Steiner, 195 Fed. 299 (1912).

The defendant in that case was convicted of criminal contempt for having prepared and presented false affidavits that were used in opposition to a motion for a preliminary injunction. The opinion by Circuit Judge Lacombe contains the statement that **"there is no essential difference between 'obstructing the administration of justice' by tampering with a juror or a witness, or by preparing, verifying, and securing the presentation of a false affidavit, intended to influence the action of a court."**

The conviction was affirmed by the Court of Appeals for the Second Circuit in **202 Fed. 419 (1912).**

Counsel for appellants complain that prejudicial error was committed by the admission in evidence, over their objection, of testimony by McMullin that Ruddy told McMullin before the preparation and execution of his false affidavit on Thursday night, November 3rd, that William J. Burns wanted the affidavit made for the client (R. 623). It is contended that such testimony was rank hearsay and therefore inadmissible.

We submit that this evidence was competent and admissible as part of the *res gestae* under the holding of this Court in the case of

United States v. Gooding, 25 U. S. 460 (1827).

The defendant in that case was indicted under the

Slave Trade Act of April 20, 1818. The trial court admitted in evidence the declarations of the master of the ship, which the defendant owned, that the vessel had been engaged in the slave trade and had made a good voyage. Objection was raised as to the admissibility of these declarations and the judges of the Circuit Court of Maryland, in which the prosecution was had, were divided in opinion upon its admissibility. This question of evidence was certified to this Court for final determination; and in holding the evidence admissible, Justice Story said (pp. 468-70):

> "It is to be observed, that, as preliminary to the admission of this testimony, evidence had been offered to prove that Gooding was owner of the vessel, that he lived at Baltimore, where she was fitted out, and that he appointed Hill master, and gave him authority to make the fitments for the voyage, and paid the bills therefor; that certain equipments were put on board peculiarly adapted for the slave trade; and that Gooding had made declarations that the vessel had been engaged in the slave trade, and had made him a good voyage. The foundation of the authority of the master, the nature of the fitments, and the object and accomplishments of the voyage, being thus laid, the testimony of Captain Coit was offered as confirmatory of the proof, and properly admissible against the defendant. It was objected to, and now stands upon the objection, before us. **The argument is, that the testimony is not admissible, because, in criminal cases, the declarations of the master of the vessel, are not evidence to charge the owner with an offense; and that the doctrine**

of the binding effect of such declarations by known agents, is, and ought to be, confined to civil cases. We cannot yield to the force of the argument. In general, the rules of evidence in criminal and civil cases are the same. Whatever the agent does, within the scope of his authority, binds his principal, and is deemed his act. It must, indeed, be shown, that the agent has the authority, and that the act is within its scope; but these being conceded or proved, either by the course of business, or by express authorization, the same conclusion arises, in point of law, in both cases. Nor is there any authority for confining the rule to civil cases. **On the contrary, it is the known and familiar principle of criminal jurisprudence, that he who commands, or procures a crime to be done, if it be done, is guilty of the crime, and the act is his act.** This is so true, that even the agent may be innocent, when the procurer or principal may be convicted of guilt, as in the case of infants or idiots, employed to administer poison. **The proof of the command or procurement, may be direct or indirect, positive or circumstantial; but this is matter for the consideration of the jury, and not of legal competency.** So, in cases of conspiracy and riot, when once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all, and is evidence against all. Each is deemed to consent to, or command, what is done by any other, in furtherance of the common object. Upon the facts of the present case, the master was just as much a guilty principal as the owner, and just as much within the purview of the act, by the illegal fitment.

"The evidence here offered was not the mere declarations of the master, upon other occasions, totally disconnected with the objects of the voyage. **These declarations were connected with acts in furtherance of the objects of the voyage, and within the general scope of his authority as conductor of the enterprise.** He had an implied authority to hire a crew, and do other acts necessary for the voyage. The testimony went to establish, that he endeavored to engage Captain Coit to go as mate, for the voyage then in progress, and his declarations were all made with reference to that object, and as persuasives to the undertaking. **They were, therefore, in the strictest sense, a part of the res gestae, the necessary explanations attending the attempt to hire.** If he had hired a mate, the terms of the hiring, though verbal, would have been part of the act and the nature of the voyage, as explained at the time, a necessary ingredient. **The act would have been so combined with the declarations, as to be inseparable, without injustice.** The same authority from the owner which allows the master to hire the crew, justifies him in making such declarations and explanations as are proper to attain the object. Those declarations and explanations are as much within the scope of the authority, as the act of hiring itself. **Our opinion of the admissibility of this evidence proceeds upon the ground, that these were not the naked declarations of the master, unaccompanied with his acts in that capacity, but declarations coupled with proceedings for the objects of the voyage, and while it was in progress.** * * *"

Much of the foregoing quoted language from the opinion in the Gooding case is peculiarly apposite to the facts of the present case. The agency and authority of Ruddy are not in dispute. The statement that William J. Burns wanted the affidavit made was used by Ruddy to induce the preparation and procurement of the false McMullin affidavit. Clearly it was part of the *res gestae* regarding that false affidavit. Moreover, Burns subsequently made that affidavit his act and deed, both by his own words and the declarations of his counsel. Not only did he expressly ratify its preparation and execution but also he accepted the benefits temporarily accruing therefrom.

We submit, therefore, that the declaration of Ruddy to McMullin was competent and admissible against the principal, William J. Burns. This declaration affords further proof of Burns' knowledge of and connection with the false McMullin affidavit, if there could possibly be any need therefor.

In conclusion we submit that the record contains abundant and convincing proof that William J. Burns had full knowledge of the falsity of the McMullin affidavit and was instrumental in procuring its filing with Justice Siddons; and that, therefore, the conviction of William J. Burns for criminal contempt should be affirmed. We further submit that there is sufficient in the record to justify the fact inference that William J. Burns and Sinclair met in Washington in advance of trial and then arranged for the employment of the Burns Agency in case the jury in the Sinclair-Fall conspiracy case should not be held together.

D. No error was committed in excluding evidence of an alleged practice of jury shadowing on the part of Department of Justice agents.

Appellants complain that the trial court erred in refusing to admit evidence that agents of the Department of Justice had frequently shadowed juries in the past. This evidence was proffered for the purpose of either exculpating or mitigating their contemptuous conduct. It was rightly excluded on both grounds.

The proffered testimony could not have exculpated appellants or given any extenuation to their criminal contempt. It had no bearing on the question before the court. It would be a fair analogy for counsel representing the defendant in a robbery, rape or grand larceny case to attempt to offer evidence to the court during the trial or at the time of the sentence to show that other persons had committed robbery, rape and grand larceny. If it were to be offered for the purpose of showing that appellants believed they had a right to do the things they did then we have an answer thereto in the familiar Latin maxim that ignorance of the law excuses no one.

The admission of the proffered testimony would have been a most illogical and startling innovation in the administration of criminal law. It would in fact break down the due administration of that law and offer a too ready defense for every criminal in that there are few if any crimes that have not been committed by some other defendant on some other occasion. Had appellants not been in such desperate

circumstances we venture that their counsel would never have been forced to advance such an absurd contention.

Moreover, there is this important distinction between agents of the Department of Justice and private detectives such as the Burns operatives. The former are officers of the law; and therefore it is entirely proper and fitting that they should protect the administration of justice by the courts of which they are properly members. Like any other officer of the law, they and they alone are the proper parties to protect a jury from molestation and sinister influences.

The Burns operatives are, on the contrary, but private detectives and are in no sense officers of the law. They have no function whatever to perform with reference to the courts and the administration of justice. It is neither their duty nor their privilege to safeguard a jury.

E. No error was committed in receiving evidence showing conversations among the jurors upon the subject of being shadowed.

Despite the insistent statements in all the briefs of appellants that no juror was aware of the espionage, it is curious that there should be an assignment of error based on the admission in evidence of certain conversations among the jurors on the subject of being shadowed. This testimony was relevant and material to the Government case because it showed that the activities of the Burns operatives had in fact penetrated the consciousness of the jurors and had in fact afforded material for a distraction that the law does not contemplate shall enter the juror's mind.

Juror Kidwell testified that a number of the jurors including Herzog, Holmes and Kern, had discussed for five or ten minutes the subject of shadowing in the jury consultation room during the trial. This discussion was corroborated by the two women jurors, Mrs. Bailey and Miss Heaton. Juror Herzog testified that he had a suspicion that he was being followed. Various episodes were narrated by juror Herzog, juror Kidwell, operative Knowles and operative O'Neill, disclosing specific instances of where a juror was aware of his surveillance.

Such testimony was clearly competent. It revealed the state of mind of the jury during the trial and also brought to light the further fact that the deliberations of that body were being trammeled and

obstructed by the Washington operation. The record disclosed independently of this testimony that no one else was trailing the jurors save the Burns operatives; and therefore it was admissible in gauging the inherent effect of the espionage and showing that jurors had on several occasions become conscious of that fact.

The very nature of espionage makes it impossible for the juror to know who it was that was shadowing him. Naturally, detectives are not prominently placarded with signs indicating their employer. This concealment makes the vice of jury surveillance most insidious. For instance, the resentment that naturally follows the discovery of the surveillance may well be directed against the innocent and not the offending party. It may well be that the jurors in the present case were prejudiced against the Government's cause by the vicious practices of the Burns operatives in the employ of appellants. This is an unfair risk that every innocent party must needlessly undergo in any jury espionage.

In considering the alleged erroneous rulings of the trial judge in the present case, it should always be borne in mind that this case was heard without a jury, that the trial judge is presumed to act only on proper evidence, and that on appeal the judgment will not be reversed so long as there is properly admitted evidence to justify it. This principle of law is based on **Section 269** of the **Judicial Code** (U. S. C. A. tit. 28, Sec. 391), which reads, in part:

> "• • • **On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties.**"

The law of criminal contempt has always acknowledged and followed the above proposition of law. In the recent case of

Oates v. United States, 233 Fed. 201 (1916) (C. C. A. 4),

Circuit Judge Woods, in affirming a conviction for contempt in violating a temporary restraining order, said (p. 205):

> "Indeed, had the admission of incompetent testimony been the only matter involved when the cases were here before, this court would not have been justified in sending the cases back for the correction of that error; **it would have been our duty to review the record and decide whether there was sufficient competent testimony to support the judgments. When a judge hears a case without a jury, he is supposed to act only on proper evidence, and if on review it is found that the evidence properly admitted justifies the decree it ought to be affirmed, and if not it ought to be reversed.** • • • In all these and many other cases the rule laid down by Chief Justice Marshall in Field v. United States, 9 Pet. 202, 9 L. Ed. 94, has been followed:

"'As the cause was * * * not tried by a jury, the exception to the admission of evidence was not properly the subject of a bill of exceptions. But if the district court improperly admitted the evidence, the only effect would be that this court would reject that evidence, and proceed to decide the cause as if it were not on the record. It would not, however, of itself constitute any ground for a reversal of the judgment.'

"The wisdom of the rule that a new trial is not to be granted because of the admission of incompetent evidence, when the trial is by the judge without a jury, is forcibly illustrated by the cases now before us. The testimony had been taken by the district judge, and he had made his findings on what he regarded the competent testimony. Had this court determined that certain testimony should have been excluded and the cases sent back for a new trial, the parties would have been put to the expense and trouble of producing all of the witnesses before the same judge, who would have excluded the testimony found by the appellate court to be incompetent. **It is manifest that the same result was effected by striking from the record as it stood all of the incompetent evidence and leaving the competent evidence for consideration.** Any impression made by the incompetent evidence could not have been better effaced by a new trial than by excluding it from consideration."

We submit that the conversations among jurors regarding shadowing was competent in that they disclosed the jurors were aware of the espionage.

This interference with the serenity of mind in which the law cloaks the jury while discharging their functions as triers of the facts constituted but another ground in support of the conviction of appellants for criminal contempt. Even if it be held that this testimony was incompetent, no reversible error was thereby committed inasmuch as there was abundant other testimony to justify the conviction.

F. No error was committed in admitting evidence of conversations between juror Kidwell and his parents during the period of jury service.

Appellants object to the admission in evidence of the conversation between juror Kidwell and his mother within an hour or two after the visit of operative O'Reilly to the Kidwell home. The mother first told juror Kidwell about the visit and later repeated her account thereof to her husband when he came home that evening,—juror Kidwell, the son, being also present.

The relevancy of these conversations is not open to discussion. When a private detective goes to the home of a juror in a criminal trial, describes himself as a representative of the District of Columbia Board of Health, states that he has some papers to be signed with regard to the barber shop owned by the juror's father and then rather curiously asks the mother of the juror where the barber shop is located; surely the subsequent narration of that visit to the juror and its repetition later in his presence, is competent and admissible not only upon the subject of whether or not the jury espionage is impinging upon the mind of a juror and providing unwarranted distraction (particularly when during the course of the trial some of the jurors are discussing the subject of being shadowed and watched), but also upon the subject of the reasonable tendency of such a visit to obstruct and interfere with the due administration of justice.

No valid objection can be raised to the admission of this testimony and other testimony of like nature upon the ground of hearsay. These conversations were not offered for the purpose of proving the truthfulness of the facts then narrated, but were on the contrary merely offered to show that the discussion had taken place. Such evidence is in every sense a verbal act and a part of the *res gestae;* and is therefore recognized by all courts as outside the hearsay rule.

G. No error was committed in admitting evidence of juror Kidwell's conversations in the National Museum grounds and near the door of the court house.

Juror Kidwell was permitted to tell on the witness stand how some stranger approached him during the course of the trial while he was sitting on a bench near the National Museum and acted in a strange and suspicious manner. He also told of how some stranger once approached him in the court house grounds and asked about getting in to hear the trial and then asked juror Kidwell what he thought of the case. Juror Kidwell was not able to identify either operative O'Reilly or operative Stewart as these two men.

Counsel for appellants assert that the admission of this evidence constitutes reversible error. We submit that this evidence was pertinent and properly received by the trial judge. In the first place, it is entirely in keeping with the uncontradicted efforts of the Burns operatives to ascertain the views of juror Kidwell regarding the trial. In the second place it is highly significant that the daily hand written reports of the Burns operatives, who were then so closely shadowing every movement of juror Kidwell during his waking hours, contain no reference to either episode. This omission can be explained in but one way, namely, that these experimental approaches to juror Kidwell were carried on by someone known to or in the employ of the Burns Agency, while the

Burns operative shadowing the juror lay in wait to see that no one else was observing the attempt upon his subject.

The mother of juror Kidwell testified that her son had discussed these episodes with her at their home (R. 508). This is but further proof of the distraction and interference with a juror's mind resulting from the espionage, and also discloses a further attempt to ascertain the views of a juror regarding the merits of the cause being tried before him. All the above testimony is clearly admissible as verbal acts within the *res gestae*.

H. The trial court properly excluded the testimony of operative O'Reilly regarding the conversation on the occasion of his visit to the home of juror Kidwell and to the barber shop of his father.

While under direct examination by the Government, operative O'Reilly was asked at no time by the Government to relate any part of any conversation that he had either at the home of juror Kidwell or at the barber shop of Kidwell's father. On cross examination by counsel for appellants, O'Reilly was asked to state what was said on each occasion (R. 428). The Government thereupon objected to the question upon the ground that such interrogation was outside the scope of direct examination. This objection was sustained and O'Reilly was not permitted to narrate his conversations with the mother and father of juror Kidwell.

Counsel for appellants now assign as error the exclusion of this testimony. We submit that the evidence was properly excluded. There can be no question but that the cross examination of a witness may not go beyond the bounds of the direct examination. This is a rule of evidence too well established to require any citation of authorities.

The exclusion of O'Reilly's testimony was in no sense prejudicial to the cause of appellants. Besides, counsel for appellants could have readily called O'Reilly as a witness for the defense and procured

the testimony in that manner. Such is the invariable practice of our courts. Furthermore, the conversation between the mother of juror Kidwell and O'Reilly was placed in evidence by the Government when Mrs. Kidwell was herself called to the stand and testified at length regarding the visit of operative O'Reilly to the home of juror Kidwell.

I. The trial court properly refused to dismiss the petition and discharge the rule either at the close of the government's case or at the conclusion of the evidence.

Appellants complain that the trial court erred in refusing to dismiss the petition and discharge the rule at the close of the case in chief of the United States and again at the close of the whole evidence. This alleged error is based upon the contention of appellants that the jury espionage and the activities of the Burns operatives pursuant thereto did not obstruct or tend to obstruct the due administration of justice.

This fallacious contention has been fully answered under the second section of the argument in this brief (pp. 42-85, *supra*); and it will serve no useful purpose to repeat any portions of that argument here. The Government bottoms its cause upon the ruling of this Court in the Toledo case, *supra*, that the test and criterion for criminal contempt is the reasonable tendency of the offending acts to obstruct the due administration of justice; and also upon the fact finding, amply supported by an abundance of competent evidence, that the instant jury espionage not only reasonably tended to obstruct justice but had also actually obstructed it and thereby largely caused the declaration of the mistrial in the Sinclair-Fall conspiracy case on November 2, 1927. In this regard we quote the following significant language from the opinion of the trial judge (R. 854-55):—

> **"* * * I cannot escape the conviction, therefore, that respondent Sinclair, respondent Day,**

respondent Sherman Burns and respondent W. J. Burns, have been perhaps in different degrees, all involved, more or less directly involved, in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this court. If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publication of the affidavit regarding it, but at least in part, necessitated a mistrial."

III. CONCLUSION.

We respectfully submit that the uncontradicted proofs in this case show that the jury espionage conducted by appellants was not a simple surveillance in order to protect the jurors from improper influences, but had as its sole object the corruption of individual members of that body after appellants had first ascertained that the jurors were not being shadowed and hence that their sinister and venal activities might thereafter be pursued with impunity and without fear of detection. We further submit that the jury espionage reasonably tended to and did actually interfere with justice, as found by the trial judge. We also submit that the false affidavits subsequently filed in justification of the jury espionage were intended to influence and mislead the court and in that manner obstruct justice; and that therefore the procurement and filing of these false affidavits constitutes in itself a further contempt of court. We finally submit that no prejudicial error was committed by the trial judge in his various rulings upon the admission or exclusion of evidence.

We therefore respectfully request that the present appeal be dismissed and the judgment of conviction of appellants for criminal contempt be affirmed.

Respectfully submitted,

OWEN J. ROBERTS,

Special Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 748.—October Term, 1928.

Harry F. Sinclair, Henry Mason Day, William J. Burns, W. Sherman Burns, Appellants, vs. The United States of America, Appellee. } On Certificate from the Court of Appeals of the District of Columbia.

[June 3, 1929.]

Mr. Justice McReynolds delivered the opinion of the Court.

November 22, 1927, the United States, by their attorney, presented to the Supreme Court, District of Columbia, a written petition for an order requiring appellants Harry F. Sinclair, William J. Burns, W. Sherman Burns, and Henry Mason Day to show cause why they should not be punished for contempt of that court.

This petition alleged:—

That on October 17th, 1927, *United States* v. *Harry F. Sinclair and Albert B. Fall*, wherein the defendants were charged with conspiracy to defraud, came on for trial. Twelve persons selected as jurors were sworn at 12:20 P. M., October 18th, and thereafter the United States proceeded to present evidence. The jury was respited from day to day, until November 2nd when it was discharged and a mistrial entered because of charges of improper conduct by a juror, and proof showing that "there were a large number of operatives of the William J. Burns International Detective Agency of New York, then engaged in the District of Columbia, since October 18th, 1927, in a close, intimate, objectionable, and improper surveillance and investigation of the jurors aforesaid and the relatives, neighbors, and friends of said jurors."

That immediately after the jury was sworn Sinclair directed Day to engage the William J. Burns International Detective Agency, to receive reports therefrom and supervise the activi-

tives of its operatives for the following objects: "To spy upon said jurors and each of them, to bribe, intimidate and influence said jurors and each of them, and to do anything calculated to interfere with and impede said jurors and each of them in the unbiased discharge of their duties in the trial of said cause, and to influence, pervert, impede, and prevent said jurors in the discharge of their duties as jurors, and to impede, pervert, and prevent the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon the said jurors and each of them for the purpose of concocting false charges against one or more of the said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid; or otherwise accomplish such purpose."

That Day employed the Agency through W. Sherman Burns, an officer then in New York; on the following day fifteen named operatives were assembled in Washington and assigned to spy upon, investigate, and shadow jurors. They continued so to do until November 2nd.

That William J. Burns then actively engaged in conducting the affairs of the Detective Agency visited Washington October 12 and 13th and arranged for the intended operations. November 3rd he returned and in pursuance of the general plan, procured a false affidavit concerning the conduct of Juror Glasscock which was presented to the trial Judge.

That operatives and employees of the Detective Agency investigated encumbrances on the home of one juror, also the affairs of his neighbors; made an investigation of the brother and father of another juror; and one of them [McMullin] falsely reported that Juror Glasscock was seen in conference with an attorney for the United States.

That the operatives reported daily to their superior officer who disclosed the result to Day and Sinclair, the original reports being sent to W. Sherman Burns, New York City.

"That, at all times hereinbefore mentioned, each of the persons above named as respondents to this petition well knew

all the premises aforesaid, and well knew that said criminal prosecution was being conducted in said court as aforesaid, that said prosecution was not finished, that said jurors were sworn jurors trying the issues in said cause in said court as aforesaid; that they the said respondents were not, as in fact they were not, called upon or authorized by said court, or by anybody in authority, to spy upon said jurors or any of them, or to bribe, molest, intimidate, or influence said jurors or any of them, or to do anything calculated to interfere with or impede said jurors of any of them in the unbiased discharge of their said duties, or to influence, pervert, prevent, or in any manner, or to any extent, impede, the due administration of justice in said court in the trial of said criminal prosecution, either by corruptly influencing said jurors to decide the issues of said prosecution in favor of the defendants therein, or to disagree as to said issues, by unlawfully spying upon said jurors or any of them for the purpose of concocting false charges against one or more of said jurors, in case such a course should seem advantageous to said defendants in said cause, with a view of bringing about a mistrial of the cause aforesaid."

The rule issued. Appellants presented separate answers under oath.

They challenged the sufficiency of the petition to charge anything done in the presence of the Court or near thereto which obstructed or impeded due administration of justice, or tended so to do. They denied any purpose to establish "contact" between an operative and a juror, or that there was such contact; also any purpose to exert improper influence. They asserted the legal right under the circumstances to shadow jurors without contact; admitted employment of detectives who diligently followed the jurors while without the court room and made daily reports in respect of them.

The answer of William J. Burns stated that since August, 1921, he had not actively directed the affairs of the Detective Agency and was not aware until October 31st, 1927, when advised by a newspaper correspondent, that it had been employed to shadow the jury. He admitted presence in Washington October 12th and 13th, 1927, but denied that his visit had any connection with em-

ployment by Sinclair or his representatives. He also denied improper connection with the false affidavit concerning juror Glasscock by William J. McMullin, alias Long, also any association, directly or indirectly, with that operative until after the mistrial. And further: "This respondent says that had his advice been sought upon the subject he would unhesitatingly have advised that such employment was a lawful and proper practice frequently followed by the Bureau of Investigation of the Department of Justice of the United States on behalf of the Government, as well as by private litigants, both plaintiffs and defendants, in instances where juries are not kept together during the trial of a cause."

The answer of W. Sherman Burns admitted that he was secretary and treasurer of the Detective Agency and with his brother directed its operation; that on October 18th he accepted employment from Day to watch individual members of the jury and to report whether any person sought or established contact with them; but he averred that all operatives obeyed their strict instruction to do nothing calculated to interfere with or intimidate any juror. He denied that he procured the making of any false affidavit or was guilty of improper conduct. And further: "If by the statement in said petition that 'they, the said respondents, were not, as in fact they were not, called upon or authorized by said court or by anybody in authority' to spy upon the said jurors or any of them, it is meant to charge or to imply that the right to exercise surveillance of a jury empanelled in any cause is a right reserved exclusively to, and one that can be exercised only by, the government of the United States or its prosecuting officers, this respondent is advised by counsel that there is no warrant in law therefor, and this respondent is further advised by counsel that the Agency and its officers and operatives were strictly within the letter and spirit of the law in accepting the employment hereinbefore described and defined, and in doing the work thereunder, and that no contempt of this honorable court was committed thereby."

The answer of Harry F. Sinclair admitted that he authorized the employment through Day of operatives of the Detective Agency for the purpose of shadowing the members of the jury without establishing contact, and that some fifteen operatives were assembled in Washington on October 19th who for a number of

days thereafter kept the jurors under surveillance and made daily reports. He averred that he had cause to believe he had been under surveillance by representatives of the United States and feared efforts would be made unlawfully to influence the jury. Also that in the circumstances he rightly put the jury under observation. And further: "Having in mind the matters and things herein set forth, and believing that in cases involving great public interest the government from time to time had kept jurors under surveillance during the time of such trials, and, entertaining such belief that the government of the United States had exercised such right and privilege, he believed that he, as a citizen of the United States, had the same right and privilege."

The answer of Henry Mason Day admitted that by direction of Sinclair he engaged the services of the Detective Agency, supervised their activities, received their reports and forwarded the same to Sinclair as deemed expedient. He alleged that he had reason to believe an attempt would be made unlawfully to influence the jury and that he had the right to cause the operatives to observe the jurors with the view of detecting any unlawful interference. He admitted that detectives were assembled in Washington and assigned to shadow the jurors and make reports; but he expressly denied any purpose improperly to influence or permit any operatives to establish contacts with them. He further said: "As the representative, friend and business associate of Harry F. Sinclair, this respondent, after consultation with him and instructions from him, did take part in the employment of the said Burns International Detective Agency, as he had a right to do, and this respondent did, as he had a right to do, give instructions to representatives of the said Burns International Detective Agency who were in charge of its operatives, to observe as far as they lawfully could, what persons, if any, came in contact with the said jurors during the recesses of Court, and detect, so far as it was lawfully possible so to do, whether any person or persons, endeavored or undertook improperly and unlawfully to approach and communicate with any of said jurors for the purpose of improperly influencing them in the decision of the said cause."

It is not questioned that counsel for the United States presented evidence to the court showing the activities of Burns detectives in shadowing jurors, also the misconduct of one of the

jurors, and that by reason of these things a mistrial was entered on November 2d in *United States* v. *Sinclair & Fall*.

Trial upon the charge of contempt under the petition and answers above summarized commenced December 5th, 1927, and terminated February 21st, 1928. Much evidence was taken in open court—the condensation for the record occupies more than 750 printed pages. The appellants, except Sinclair, testified; also the fourteen operatives who shadowed the jurymen. Their daily reports were presented—more than 200 of them. These showed the details of the shadowing of each juror—except Flora, described in the sketch of him as a "bull-headed man." More than a hundred witnesses were called. During the hearing on question of guilt counsel made proffer of many witnesses to come from all parts of the United States for the purpose of showing that for a long time United States attorneys throughout the Union, under direction of the Department of Justice, by agents of the Department as distinguished from local marshals, had indulged in the custom of shadowing jurors, also to show indulgence in such practices on different occasions. This proffer was rejected.

Charged with conspiracy to defraud, Sinclair and Fall were put on trial October 17th, in the Supreme Court, District of Columbia. The jury — ten men and two women — was selected and finally sworn about mid-day October 18th. The Court made no order to lock them up. There was no request therefor. Immediately thereafter (about 3:30 o'clock) Sinclair gave biographical sketches of the jurors, secured by counsel before the trial began, to Day and instructed him to employ the William J. Burns International Detective Agency to supply a corps of operatives who should shadow them. On the 19th some fifteen operatives, including a manager, field men, etc., were assembled in Washington. One of them was assigned to each juror, except Flora, with instructions to go to the court room, identify and thereafter to keep his subject under as strict surveillance as possible "outside of the court" and report to the manager.

Day delivered the biographical sketches to Manager Ruddy. The latter testified: "At the first meeting with Mr. Day he told me that he wished daily reports made from each operative. We did that. I designated the jurors to the operatives by numbers that I obtained from the list given me by Mr. Day. As I

understand it was the position they sat in in the jury box, and they counted from left to right. I was never in the court room. I had a newspaper photograph of the jurors. I told the operatives which of the jurors they were to follow. I did not show them the picture at that time. I got it later. It was not given me by Mr. Day. I instructed each one of the agents to come down to the court room to pick up his particular juror. When the jurors left the court room, the operatives were instructed to hold them under surveillance until they went home, and up to a reasonable hour at night. All the operatives reported to me each day."

For some days these instructions were carried out. Jurors were kept under strict surveillance from early morning until late at night—11, 12, 3 o'clock, whenever not actually within the court house; daily reports were turned in and their contents conveyed to Day. On October 24th a majority of the operatives were sent away and the remainder concentrated their efforts upon three jurors whose history did not indicate strength of character. Investigation was made concerning encumbrances upon the home of one of these; also to determine whether another had indicated his views during the trial. A report by Operative McMullin October 22, 1927, purposely and falsely stated that the third (Glasscock) had consulted a representative of the United States.

The evidence does not disclose that any operative was instructed to approach, or did approach a juror, nor does it disclose that any juror actually knew that he was being shadowed. Some were suspicious. The Court did not know, nor does it appear that Sinclair's counsel knew, the jury was being shadowed.

Called as a witness, Day gave rather full account of himself from his youth up, including his army service. He was not permitted to say that he had knowledge of a practice by United States Attorneys to shadow juries in criminal cases after they were sworn.

He testified: The first conversation I had with Sinclair upon the subject of shadowing the jury was about 3 P. M. on October 18, 1927, "after Mr. Sinclair had come back from Court. . . . We were at the Mayflower Hotel in Suite 1031, and Mr. Sinclair stated that he was terribly disappointed that the jury had not been locked up, and that he was very much exercised, that some of his enemies, competitors, and those who had written us so many malicious letters might in some way try to influence this jury, and

stated he wanted me to tell one of the secretaries to call up Jeffries in New York and ask him to have one of the Burnses communicate with me at a place which would be convenient for me, and that he wanted from 12 to 14 operatives, with a lieutenant and a captain, sent to Washington to cover those who were sworn as jurors in this case. He said they were to cover these jurors, not to approach them, not to speak to them, not to in any way come in contact with them. They were simply to observe and report any suspicious acts which in their opinion might be done by the respective jurors, or those coming in contact with them, and to report also, if it was feasible, the people who did come in contact with them in a way which the operatives could do without arousing suspicion. That is the substance of the instructions."

Sinclair did not take the stand. The operatives severally testified that they were instructed in harmony with Sinclair's directions to Day and acted accordingly.

On November 2nd and 3rd William J. Burns was in Washington apparently with the purpose of doing something to offset criticism of the Detective Agency aroused by the disclosures concerning surveillance of the jury. He consulted with Operative McMullin and procured the making of an affidavit by the latter based upon the false report of October 22, 1927, concerning Juror Glasscock and caused it to be presented to the presiding Judge. A few days later he spoke of efforts by parties representing the United States to tamper with the jury and the affidavit of McMullin to that effect.

The trial judge held the petition stated a case upon which appellants might be adjudged guilty of contempt and the evidence showed their guilt. Among other things, he said: "I cannot escape the conviction, therefore, that respondent Sinclair, respondent Day, respondent Sherman Burns and respondent W. J. Burns, have been, perhaps in different degrees, all involved, more or less directly involved, in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this Court. If it had not been for that surveillance, from aught that appears in this testimony, there never would have been a mistrial in this case, a surveillance that at least in part, together with the publica-

tion of the affidavit regarding it, but at least in part, necessitated a mistrial."

After close of the evidence and arguments and after the court had declared appellants were guilty of contempt counsel announced that upon the question of mitigation they re-offered the evidence tendered but excluded during the main case as to the custom of the Department of Justice to place juries under surveillance. This was overruled. Before sentence each appellant was called upon to make such statement as he might desire.

W. Sherman Burns was sentenced to pay a fine of One Thousand Dollars ($1000); Sinclair to imprisonment for six months; Day for four months; and William J. Burns for fifteen days.

Appeal was taken to the Court of Appeals. That court certified certain questions here for instructions. Thereafter, we directed the entire record to be sent up for our consideration.

Both Sinclair and William J. Burns were in Washington on October 12th and 13th, 1927, but there is no evidence of communication between them at that time. Sinclair had been a client of the Burns Agency. Circumstances connected with the making and filing of the false affidavit by McMullin, alias Long, based upon his false report of October 22nd concerning Juror Glasscock, and its presentation to the Court on November 4th, also certain statements then or thereafter made by him, might reasonably cause one to suspect William J. Burns was party to the plan for surveillance. But he emphatically denied this and we can find no material evidence to support the charge against him. As to him, the judgment below must be reversed.

The Act of Congress approved March 2, 1831, 4 Stat., Chap. 99, p. 487, provides—

> "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts

in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

Sec. 2 is in the margin.*

Sec. 1, of that Act, became R. S. Sec. 725; Judicial Code, Sec. 268; U. S. Code, Title 28, Sec. 385. The substance of Sec. 2 appears in Secs. 5399 and 5404, R. S.; Federal Criminal Code, Sec. 135; U. S. Code, Title 18, Sec. 241. See *Ex parte Terry*, 128 U. S. 289; *Savin, Petitioner*, 131 U. S. 267.

Counsel maintain that the petition does not adequately charge and the record fails to show misbehavior by appellants which obstructed the administration of justice within Sec. 268, Judicial Code, since there is neither averment nor evidence that any operative actually approached or communicated with a juror, or attempted so to do, or that any juror was conscious of observation. The insistence is that to establish misbehavior within that section it was essential to show some act both known by a juror and probably sufficient to influence his mind. We cannot accept this view. It would destroy the power of courts adequately to protect themselves—to enforce their right of self-preservation. Suppose, for example, some litigant should endeavor to shoot a juror while sitting in the box during progress of the cause. He might escape punishment for contempt if some quick-witted attendant quietly thwarted the effort and kept the circumstances secret until the trial ended.

Toledo Newspaper Company v. *United States*, 247 U. S. 402, 418, 421, adjudged the Company guilty of contempt by publishing, in the city where the court was sitting, articles concerning a pending equity case. Counsel there maintained that it was not alleged, proved, or found that any of the publications was brought

*"Sec. 2. And be it further enacted, That if any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly, or by threats or force, obstruct, or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons, so offending, shall be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished, by fine not exceeding five hundred dollars, or by imprisonment, not exceeding three months, or both, according to the nature and aggravation of the offence."

into the court building or read by the judge and, therefore, he lacked power to punish under Sec. 268, Judicial Code. Also that publication of newspaper articles outside the court room was not misbehavior amounting to contempt unless actually known to the judge. Replying, this Court, through Mr. Chief Justice White, said:—

"Clarified by the matters expounded and the ruling made in the Marshall Case [*Marshall* v. *Gordon*, 243 U. S. 521], there can be no doubt that the provision [Sec. 268] conferred no power not already granted and imposed no limitations not already existing. . . . The provision therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation, that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given by summarily treating such acts as a contempt and punishing accordingly. The test, therefore, is the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty,—a conclusion which necessarily sustains the view of the statute taken by the courts below. . . .

"True, it is urged that, although the matters which were made the basis of the findings were published at the place where the proceedings were pending and under the circumstances which we have stated in a daily paper having large circulation, as it was not shown that they had been seen by the presiding judge or had been circulated in the court room, they did and could form no basis for an inference of guilt. But the situation is controlled by the reasonable tendencies of the acts done and not by extreme and substantially impossible assumptions on the subject. Again, it is said there is no proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by the publications and, therefore, there was no proof tending to show the wrong complained of. But here again not the influence upon the mind of the particular judge is the criterion but the reasonable tendency of the acts done to influence or bring about the baleful result is the test. In other words, having regard

> to the powers conferred, to the protection of society, to the honest and fair administration of justice and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case. The wrongdoer may not be heard to try the power of the judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

Under the doctrine so stated, we think the trial judge rightly held it unnecessary to allege or show actual contact between an operative of the Detective Agency and a juror, or that any juror had knowledge of being observed. The reasonable tendency of the acts done is the proper criterion. Neither actual effect produced upon the juror's mind nor his consciousness of extraneous influence was an essential element of the offense.

That the acts here disclosed, and for which three of the appellants were certainly responsible, tended to obstruct the honest and fair administration of justice we cannot doubt. The jury is an essential instrumentality—an appendage—of the court, the body ordained to pass upon guilt or innocence. Exercise of calm and informed judgment by its members is essential to proper enforcement of law. The most exemplary resent having their footsteps dogged by private detectives. All know that men who accept such employment commonly lack fine scruples, often wilfully misrepresent innocent conduct and manufacture charges. The mere suspicion that he, his family, and friends are being subjected to surveillance by such persons is enough to destroy the equilibrium of the average juror and render impossible the exercise of calm judgment upon patient consideration. If those fit for juries understand that they may be freely subjected to treatment like that here disclosed, they will either shun the burdens of the service or perform it with disquiet and disgust. Trial by capable juries, in important cases, probably would become an impossibility. The mistrial of November 2nd indicates what would often happen. We can discover no reason for emasculating the power of courts to protect themselves against this odious thing. See *United States* v. *Shipp*, 203 U. S. 563, 575.

The acts complained of were sufficiently near the court. Most of them were within the court room, near the door of the court house, or within the city. Certainly, they were not less remote than the publication denounced in *Toledo Newspaper Company* v. *United States*. There was probable interference with an appendage of the court while in actual operation; the inevitable tendency was towards evil, the destruction, indeed, of trial by jury. *In re Savin, Petitioner, supra.*

During the hearing and before conviction of guilt counsel proffered many witnesses by whom they proposed to show a practice of the Department of Justice to cause its officers to shadow jurors. This evidence was rightly excluded. That Department is not a lawmaker and mistakes or violations of law by it give no license for wrongful conduct by others.

After the judge had declared appellants guilty, counsel offered in mitigation of punishment the same evidence concerning the alleged custom of the Department of Justice theretofore tendered on the issue of guilt. The tender was refused. Very many witnesses, who it was said would testify to such custom, had been proffered and the proposed evidence rejected; all were again tendered. The offer did not limit the proposal to the appellants' knowledge or belief or mental state. They had answered under oath, with full opportunity to present whatever they deemed important. Before sentence each was accorded opportunity to make a statement. There was no request for permission to file affidavits. Counsel were fully heard. In the circumstances, the court did not exceed the limits of proper discretion.

Cooke v. *United States*, 267 U. S. 517, 537, 538, is relied upon. There, we declared: "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. . . . In cases like this, where the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should

be imposed, the court can not exclude evidence in mitigation."

By this language we did not intend to lay down any new or hard and fast rule concerning evidence to be heard in mitigation in proceedings for contempt; and certainly there was no purpose to restrict the discretion of the trial judge in such cases more narrowly than in ordinary criminal trials. See Wharton's Criminal Procedure, 10th Edition, Sec. 1890. Moreover, the conscious purpose of Cooke was regarded as an essential element of the offense charged.

Always the language used in an opinion must be read in the light of the issues presented. Cooke was not accorded due opportunity at any stage of the proceedings to state the facts which might excuse or mitigate his conduct and the words quoted were addressed to that situation. Here there was abundant opportunity for presentation of anything really important.

Under the circumstances here disclosed to hear the many witnesses offered by counsel would have required unnecessary and intolerable extension of the long drawn out trial without material benefit. The answers relied or might have relied upon the knowledge possessed by appellants. By short affidavit or verbal statement any appellant could have advised the court again concerning facts within his knowledge, his beliefs, or general state of mind—matters which might possibly affect the degree of guilt.

The exclusion of some other evidence is assigned as error; but we think the claim is without merit and demands no extended comment.

Objections are offered to the admission of certain evidence. In answer, we need only refer to what was said in *The United States* v. *King*, 7 How. 833, 854, 855: "In some unimportant particulars, the evidence objected to was not admissible. But where the court decides the fact and the law without the intervention of a jury, the admission of illegal testimony, even if material, is not of itself a ground for reversing the judgment, nor is it properly the subject of a bill of exceptions. If evidence appears to have been improperly admitted, the appellate court will reject it, and proceed to decide the case as if it was not in the record."

Considering the whole record, we think appellants had a patient hearing upon adequately defined issues, with abundant oppor-

tunity to put forward all proper defenses and explanations. With the exception already stated, there is ample evidence to support the judgment; the punishments imposed are not excessive; the court kept within the limits of its reasonable discretion and did nothing which injuriously affected the substantial rights of the parties. Judicial Code, Sec. 269; U. S. Code, Title 28, Sec. 391.

The judgment as to William J. Burns must be reversed; as to the other appellants it is affirmed.

Mr. Justice STONE took no part in the consideration or determination of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.